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ON PARLIAMENTARY GOVERNMENT IN ENGLAND

ITS ORIGIN, DEVELOPMENT, AND PRACTICAL OPERATION

BY

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'PARLIAMENTARY GOVERNMENT IN THE COLONIES' ETC.

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BY HIS SON

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EDITOR'S PREFACE.

In presenting a second edition of Dr. Todd's work to the public, a word of explanation, and brief mention of the author's career, may not be inappropriate.

In the month of January, 1884, the author was contemplating the expediency of issuing a new edition of this work, when his sudden death removed him from an active and laborious life, over fifty years of which was spent in the public service. The whole of his official life, from the date of his appointment, when he was but a mere lad, was spent in the Parliamentary Library, which in those days was but a nucleus of the fine collection that now stands a monument to the memory of his labours. His predilection for parliamentary studies developed at a remarkably early age, so that he found himself a constitutional adviser to the uninitiated members of the Upper and Lower Legislatures, who in those days of the dawn of constitutional government in Canada were—one might almost say—groping in darkness; for as yet no author had ventured on any treatise bearing on the practice and development of parliamentary government by which they might have been guided. This early training enabled the author, when but twenty years of age, to be the pioneer in the field with his first effort: 'The

Practice and Privileges of the Two Houses of Parliament,' a work that was cited as an authority only the other day in the British House of Commons.

The motives which prompted the author to compile and publish the present work are amply stated in his preface.

Finally, in 1880, the author completed a design, long entertained, of supplying a want that he felt was much needed in the colonies, viz., the application of parliamentary government to colonial institutions, as illustrated in his 'Parliamentary Government in the Colonies.' The work deals largely with questions that have arisen out of the working of the new constitution conferred upon Canada in the confederation of the various provinces in 1867.

After the death of the author I took in hand, as time would permit, the preparation of the second edition of this work, and found that considerable alterations had been made in the text, as well as a large accumulation of additional matter in manuscript added. Beyond making a greater division, with some alteration in the arrangement, of the chapters, and embodying many of the more important notes in the text, my task has been confined to its necessary preparation for the press.

For the reasons stated in the author's preface to the second volume, the first chapter of that volume has been introduced as the second of Vol. I.

It may be observed by the reader that in some instances there is a repetition of subject; it must be borne in mind that the author has aimed at treating each subject in its entirety—whether as a matter of

prerogative, of parliamentary right, or of procedure, each in its own aspect. The same precedent, therefore, will be sometimes found illustrating the doctrine from these various standpoints.

In conclusion, I would call the attention of the reader to the eminently practical character of the work. The author has not contented himself merely with expounding the law and practice of the constitution, but he has richly illustrated his text throughout with precedents gleaned from Hansard, Sessional Papers of the Lords and Commons, Reports of Committees and Commissions, &c., &c., and all writers of eminence who have written on parliamentary history—thereby rendering the work most important to the student or enquirer as a complete bibliography of parliamentary literature.

A. H. T.

OTTAWA *February* 1887.

PREFACE.

An attempt by a resident in a distant colony to expound the system of Parliamentary Government, as administered in the mother country, may call for some explanation. I venture, therefore, to prefix to my work a few personal remarks.

More than twenty-five years ago, when in the service of the House of Assembly of Upper Canada, as an assistant in the Provincial Library, I was induced to compile a Manual of Parliamentary Practice for the use of the Legislature. The valuable treatise of Sir Erskine May, on the 'Usage of Parliament,' had not then appeared; and no work then published was sufficiently elementary and comprehensive to be of any service to our colonial legislators in the performance of their parliamentary duties. My little volume, although the crude and imperfect production of a very young man, was received with much favour by the Canadian Parliament. At the first meeting of the Legislature of United Canada, in 1841, the book was formally adopted for the use of members, and the cost of its production defrayed out of the public funds.

It was in the same year, and immediately after the union of the two Canadas, that 'responsible government' was first applied to our colonial Constitution.

In carrying out this new, and hitherto untried, scheme of colonial government, many difficult and complex questions arose, especially in regard to the relations which should subsist between the popular chamber and the ministers of the crown. Upon these questions, my known addiction to parliamentary studies, together with my official position as one of the librarians of the Legislative Assembly, caused me to be frequently consulted. I speedily became aware that then, as now, no work previously written on the British Constitution undertook to supply the particular information required to elucidate the working of 'responsible' or 'parliamentary' government. For, all preceding writers on this subject have confined themselves to the presentation of an outside view, or general outline, of the political system of England. There is nowhere to be found a practical treatment of the questions involved in the mutual relations between the Crown and Parliament, or any adequate account of the growth, development, and present functions of the Cabinet Council. In the words of Lord Macaulay, (History of England, iv. 437), 'No writer has yet attempted to trace the progress of this institution, an institution indispensable to the harmonious working of our other institutions.'

My own researches in this field enabled me to accumulate a mass of information which has proved of much utility in the settlement of many points arising out of responsible government. I was frequently urged, by persons whose opinions were entitled to respect, to digest and arrange my collections in a methodical shape. The fact that the greater part of

my notes had been collected when engaged in the investigation of questions not of mere local or temporary significance, but capable of general application, led me to think that, if the result were embodied in the form of a treatise on parliamentary government as administered in Great Britain, it might prove of practical value both in England and her colonies; and that in the constitutional states of continental Europe it might serve to make more clearly known the peculiar features of that form of government, which has been so often admired, but never successfully imitated. I therefore determined to avail myself of the resources of the well-stored library under my charge, and attempt the compilation of a work which, while trenching as little as possible on ground already worthily occupied by former writers, should aim at supplying information upon branches of constitutional knowledge hitherto overlooked.

I proposed at first to prepare, more especially for colonial use, a manual which should include a dissertation upon the peculiar features of 'Responsible Government' in the colonies. But I decided, after much reflection on the subject, to change my plan, and to confine myself to the exposition of parliamentary government in England. I arrived at this conclusion, firstly, from a conviction that the safest guide to the colonies, whose institutions are professedly modelled upon those of the mother-country, will be found in a detailed account of the system which prevails in the parent state; and, secondly, because parliamentary government in our colonies is still in its infancy, and its success is as yet but problematical.

'The well-understood wishes of the people as expressed through their representatives' has indeed been the acknowledged maxim of colonial rule; and, so far as they are applicable to colonial society, the principles of the British Constitution have, in the main, been faithfully carried out. But it is easy to foresee that some considerable modifications must at no distant day be introduced into the fabric of colonial government, to enable it to resist the encroachments of the tide of democratic ascendency, which is everywhere uprising, and threatening to overwhelm 'the powers that be.' Most of the British colonies still enjoy the advantage of an immense extent of unoccupied territory, affording to industrious men of the humblest class the opportunity of becoming landowners, and of achieving a degree of comfort and independence which naturally inclines them to be supporters of law and order. Nevertheless, from an observation of the working of our municipal institutions in Canada, and of the characteristics and results of responsible government in the British dependencies generally, it is evident that the democratic element is everywhere gaining the mastery, and is seeking the overthrow of all institutions that are intended to be a check upon the popular will.

The great and increasing defect in all parliamentary governments, whether provincial or imperial, is the weakness of executive authority. It may be difficult to concede to the governor of a colony the same amount of deference and respect which is accorded to an English sovereign. But any political system which is based upon the monarchical principle must concede

to the chief ruler something more than mere ceremonial functions. It is the tendency of the age in which we live to relax the bonds of all authority, and to deprive all rank and station, not directly derived from the people, of the influence which it has heretofore possessed. The hereditary dignity of the British Crown itself has, within the last half-century, sustained considerable loss. In popular estimation in our own day the prerogatives of royalty are accounted as well-nigh obsolete; and whatever may be the degree of affection expressed towards the occupant of the throne, the sovereign of England is too often regarded as but little more than an ornamental appendage to the state, and her rightful authority either derided or ignored. These erroneous ideas, it need scarcely be said, are not shared by any who have participated in the direction of state affairs. But they are widely diffused, even amongst educated men. The true position of the sovereign in a parliamentary government may not appear to be capable of exact definition, because much will always depend upon the personal character of the reigning monarch. But in the treatment of this difficult question, I have endeavoured to reflect faithfully the views of the most experienced statesmen of the present day; and while I have elsewhere claimed for the popular element in our constitution its legitimate weight and influence, I have here sought to vindicate for the monarchical element its appropriate sphere; being convinced that the functions of the crown are the more apt to be unappreciated because their most beneficial operations are those which, whilst strictly constitutional, are hidden from the public eye.

In attempting to define the limits between the authority of the crown and that of the legislature under parliamentary government, I have never relied upon my own interpretations, but have always illustrated the matter in hand by reference to the best opinions recorded in the debates of Parliament, or in evidence before select committees of either House. Such testimony, for the most part from the lips of eminent statesmen and politicians of the present generation, is of the highest value, especially when it embodies information upon the usages of the constitution which had not previously appeared in print. It is in the abundant use of such valuable material, never before incorporated in any similar treatise, that the chief claim of my work to public attention must consist.

Notwithstanding these obvious advantages, I am deeply conscious of its many defects and shortcomings; and in submitting it to the favourable consideration of those to whom it is addressed, I can only plead, as an excuse for its deficiencies, an honest endeavour to supply a want which must have been often experienced, by men engaged in public life, both at home and abroad.

ALPHEUS TODD.

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Table of Abbreviations used in the Foot-notes.

Ad. & Ell.	Adolphus & Ellis Queen's Bench Reports.
Adolphus	History of England under George III.
Am. L. Rev.	American Law Review.
Ann. Reg.	Annual Register.
Best & Smith	Queen's Bench Reports.
Bisset	The Commonwealth of England.
Black. Mag.	Blackwood's Magazine.
Blackstone	Commentaries on the Law of England.
Bro. & Bingham	Broderip & Bingham's Common Pleas Reports.
Brod. & Freem.'s Judgments.	Broderick & Freemantle's Ecclesiastical Cases.
Broom Leg. Max.	Legal Maxims.
Const. Law	Constitutional Law.
C. & B.	Common Bench Reports.
Campbell's Chan.	Lives of the Lord Chancellors.
Can. Sess. Pap.	Sessional Papers of the Dominion of Canada.
Chan. of the Exch.	Chancellor of the Exchequer.
Chitty Prerog.	Prerogative Law.

Clode, Mil. Forces	Clode Military Forces.
Col. Pol.	Colonial Policy.
Com.	The Commons.
Com^e.	Committee.
Com. Dig.	Comyn's Digest of the Laws of England.
Com. Jour.	Journals of the House of Commons.
Com. Pap.	Sessional Papers of the House of Commons.
Con. Rev.	Contemporary Review.
Const. Hist.	Constitutional History.
— Prog.	— Progress.
Cooley, Const. Lim.	Constitutional Limitations.
Cox, Anc. Parly. Elec.	Ancient Parliamentary Elections.
— Inst.	Institutions of the English Government.
Crim.	Criminal.
De Lolme, Const.	Constitution of England.
Dicey	The Privy Council.
Dub. Rev.	Dublin Review.
Ed.	Edition.
Ed. Rev.	Edinburgh Review.
Ell. & B.	Ellis & Blackburn's Queen's Bench Reports.
Ency. Brit.	Encyclopædia Britannica.
Eng. Const.	English Constitution.
Fin. Reform Alm.	Financial Reform Almanac.
Forsyth, Const. Law	Cases and Opinions on Constitutional Law.
Fort. Rev.	Fortnightly Review.
Fost. & Fin.	Foster and Finlason Nisi Prius Reports.
Fras. Mag.	Fraser's Magazine.
Freeman	Norman Conquest.
Govt. of Eng.	Government of England.
Gt. Gov. Fam.	Great Governing Families.
H. of C.	House of Commons.
H. of L.	House of Lords.
H. of Rep.	House of Representatives.
Hale	Pleas of the Crown.
Hallam's Const.	Constitutional History of England.
Hans. D.	Hansard's Debates.
Hats. Prec.	Hatsell's Precedents of Proceedings in the House of Commons.
Hawkins' P. C.	Pleas of the Crown.
Hearn, Govt. of Eng.	Government of England.
Hist. of Eng.	History of England.
Inst.	Coke's Institutes.
Int. Rev.	International Review.
Irish Stat. Soc. Jour.	Irish Statistical Society Journal.
Kemble	The Saxons in England.
Knight	History of England.
L. R. App. Cases	Law Reports Appeal Cases.
— Prob. Div.	— Probate Division.
L. T. Rep. N.S.	Law Times Reports, New Series.
L. Can. J.	Lower Canada Journal.
Law Mag. N.S.	Law Magazine, New Series.
Ld.	Lord.
Lewis, Admin.	Administrations of Great Britain.
Lords' Pap.	Sessional Papers of the House of Lords.
Mac. Mag.	Macmillan's Magazine.
Mac. & G.	Macnaghten and Gordon's Chancery Reports.
Martin, Pr. Consort	Life of the Prince Consort.
May, Const. Hist.	Constitutional History.
— Parl. Prac.	Parliamentary Practice.
Mill, Rep. Govt.	Representative Government.
Mir. of Parl.	Mirror of Parliament.
Moore, P. C. C.	Moore's Privy Council Cases.

N. Am. Rev.	North American Review.
Nicholas	Proceedings and Ordinances of the Privy Council of England.
19th Cen.	Nineteenth Century.
Norm. Conq.	Norman Conquest.
p.	Page.
P. C.	Privy Council.
Palgrave	English Commonwealth.
Parl. D.	Parliamentary Debates (Series of Debates from 1830 to 1880).
Parl. Govt.	Government.
Parl. Hist.	— History.
Parl. Prac.	— Practice.
Parl. Rememb.	Smith's Parliamentary Remembrancer.
Parry, Parlts.	Parliaments and Councils of England.
Peel's Mem.	Peel's Memoirs.
Pict. Hist. of Eng.	Pictorial History of England.
Pol.	Political.
Prac.	Practice.
Prin. of Gov.	Principles of Government.
Q. B. Rep.	Queen's Bench Reports.
Quar. Rev.	Quarterly Review.
Rep. of Sel. Com^e.	Report of Select Committee.
Rept. Govt.	Representative Government.
Rept.	Report
Rose, Corresp.	Diaries and Correspondence.
S.	Series.
S. O., H. of L. (or C.)	Standing Orders, House of Lords (or Commons).
Sat. Rev.	Saturday Review.
Shower's Rep.	King's Bench Reports.
Stat. of Can.	Statutes of Canada.
Stat. Soc. Jour.	Statistical Society Journal.
Step. Com.	Stephen's Commentaries on the Laws of England.
Stephen's Ecc. Stat.	Ecclesiastical and Eleemosynary Institutions.
— Hist. Crim. Law	History of the Criminal Law of England.
Stockmar's Mem.	Memoirs of the Baron.
Stubbs' Const. Hist.	Constitutional History of England.
Term Rep.	Durnford and East's Term Report.
v.	Volume.
Wallace, Sup. Ct. Rep.	Wallace's United States Supreme Court Reports.
Well. Desp.	Wellington's Despatches.
West. Rev.	Westminster Review.
Wheaton	United States Supreme Court Reports.
Wilson	King's Bench Reports.

ON

PARLIAMENTARY GOVERNMENT

IN

ENGLAND.

CHAPTER I.

GENERAL INTRODUCTION.

Definition of parliamentary government.

THE GOVERNMENT of England is conducted in conformity with certain traditional maxims, which limit the exercise of all political powers therein. These maxims are, for the most part, unwritten and conventional. They have never been declared in any formal charter or statute, but have developed, in the course of centuries, side by side with the written law. They embody the matured experience of successive generations of statesmen in the conduct of public affairs, and are known as the precepts of the constitution.[a]

The principle of a constitutional or parliamentary government is essentially different from either that of a republic or of a despotism. A constitutional king is not responsible to the people, but he is bound by the laws; he is not free to govern as he pleases, but must rule in conformity to the recognised usages of the

[a] See Freeman, Growth of Eng. Const. c. iii.; Bonamy Price, Cont. Rev. v. 38, p. 943.

constitution, and in subjection to its fundamental precepts, which regulate and define the rights and privileges of all classes and estates in the realm.

Power of the sovereign under parliamentary government.

Society, like the family, is of divine appointment; and headship, in either case, has a divine origin. In a parliamentary government, rule and authority must receive the sanction of popular consent, though it does not necessarily emanate from the will of the people. The obligation of a king to rule righteously is as great as that of a people to obey those who have the rule over them. It is indeed more difficult to control and punish a sovereign who may abuse his office than to call people to account for treason and rebellion. But in a parliamentary government the kingly power is subjected to such rigid limitations and restraints that its abuse is difficult, if not impossible. The axiom that the king can do no wrong, is necessary for the protection of the monarchy from injurious aspersion or attack; but it is rendered innocuous, as a means of oppression or misrule, by the affirmation of the doctrine that ministers of state are responsible for every exercise of kingly authority. These ministers have been permitted to share, with the crown, in all the functions of royalty, on condition that they assume a full responsibility for the same, before the Parliament and people. And inasmuch as no minister could properly undertake to be responsible for a policy which he could not control, or for acts which he did not approve, it has necessarily followed that the direction and administration of the policy of government have passed into the hands of the constitutional advisers of the crown, for the time being; subject only to their continuing to retain the confidence of their sovereign and of Parliament. By this means, the services of statesmen in whom the country has confidence, and who represent the varying needs of the age, and its progressive intelligence, are secured on behalf of the empire; while the equilibrium

Relation of ministers to the crown.

of the state is duly preserved, amidst the recurrent changes of its actual rulers, by the permanence of the monarchical principle in the person of the sovereign. Such are the theory and practice of the British constitution, which it will be the endeavour of the author to explain, both historically and practically, in the following pages.

Powers of the crown must be exercised through ministers.

'Since the establishment of parliamentary government, the ordinary description of the British constitution, as one in which the executive power belongs exclusively to the crown, while the power of legislation is vested jointly in the sovereign and the two Houses of Parliament, has ceased to be correct, unless it be understood in a legal and technical sense. It is the distinguishing feature of parliamentary government that it requires the powers belonging to the crown to be exercised through ministers, who are held responsible for the manner in which they are used, who are expected to be members of the two Houses of Parliament, the proceedings of which they must be able generally to guide, and who are considered entitled to hold their offices only while they possess the confidence of Parliament, and more especially of the House of Commons.'[b] Through the instrumentality of the cabinet, as a connecting link between the crown and Parliament, a close union, an intimate reciprocal action, has been effected between the executive and legislative powers. It is this which has given peculiar vitality to English parliamentary government.[c]

Revolution of 1688.

The great and leading maxims of the British constitution, as now interpreted, are the personal irresponsibility of the king, the responsibility of ministers, and the inquisitorial power of Parliament. For the complete recognition of these cardinal principles, the nation is indebted to the statesmen who effected the Revolution of 1688.

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[b] Grey on Parl. Govt. p. 4. [c] See Bagehot on the Eng. Const. p. 12.

We have the great Lord Camden's authority for asserting that 'The Revolution restored this constitution to its first principles; it did no more. It did not enlarge the liberty of the subject, but gave it a better security. It neither widened nor contracted the foundation, but repaired and perhaps added a buttress or two to the fabric.'[d] To the same effect it has been well observed by a recent political writer, that, 'Prior to 1688, the theory of our constitution was, that the crown was limited, and that its powers were checked by the Houses of Parliament; but this theory was not always recognised by the king in practice. The Revolution of 1688 brought the theory and practice into harmony. Since that time the crown has never attempted to govern without Parliament.'[e]

Government by prerogative.

Prior to that epoch, the government of England was mainly carried on by virtue of the royal prerogative, that is to say, by the king in person, with the advice and assistance of ministers appointed by himself, and who were responsible to the sovereign alone for the ordinary conduct of public affairs; whilst they were amenable to Parliament for any direct abuse of their functions. Under this system Parliament had no voice in the selection of ministers of the crown, and whenever adverse opinions in regard to questions of administration were entertained by either House of Parliament they had no means of making those opinions known, except by retrospective complaint and remonstrance. This occasioned frequent contests between the crown and Parliament, which sometimes ended in civil war.

While the sole executive authority of the realm was possessed by the king—in whom, together with his ministers and officers of state, was vested the exclusive right of administering the laws of the land—the legislative authority was divided between three co-ordinate powers, the King, the House of Lords, and the House of Commons. Each of these branches of the one Parliament enjoyed an equality of rights, and had a deliberate choice of assent or dissent to every legislative measure.

[d] 19 Howell's State Trials, p. 1068. [e] Ed. Rev. v. 109, p. 274.

Balance of powers in the constitution.

So long as this form of government prevailed, it was customary to assume that the well-being of the English commonwealth consisted in the preservation of the balance of power between these co-ordinate branches of the supreme Parliament, so that any abuse of authority on the part of one, might admit of correction by the interposition of the authority of another branch. For example, the power of the two Houses of Parliament to frame laws was presumed to be held in check by the king's negative, which could always be interposed to prevent the adoption of an unwise or unnecessary statute. Again, the arbitrary exercise of the king's right of veto was itself restrained by the power which Parliament possessed of refusing a grant of supplies for the service of the crown. On the other hand, freedom of speech, though nominally conceded to Parliament from a very early period, was not invariably respected by the crown. In some instances, even the Tudor monarchs went the length of charging the Speaker of the Commons to forbid members from meddling with matters of state. Occasionally we read of free-spoken representatives being cited before the Privy Council, interrogated and reprimanded, or sent to the Tower. In self-defence, the Commons adopted a standing order for the exclusion of strangers during debate, and making it punishable to repeat out of doors what had passed within.[f] And in order to maintain the due independence of the legislative chambers, it was held to be an infringement of constitutional privilege for the king to take the initiative in legislation by submitting any Bills to the consideration of the two Houses—save only acts of grace and pardon—or even for the sovereign to take formal notice of any resolution or proceeding of Parliament which did not affect the interests of the crown,

[f] Macaulay, Hist. of Eng. v. 3, p. 543; Park's Dogmas, p. 104; May, Parl. Prac. c. iv.

until the same had been regularly communicated to him for his concurrence.[g]

Contrast between the theory and practice of the constitution.

This was the doctrine and usage of the English constitution which prevailed before the era of parliamentary government; and notwithstanding the fundamental alterations that have since taken place in constitutional practice, this is still the theory of the British government, as expounded by Blackstone, Paley, De Lolme, and other text-writers of a later date. And yet how strikingly is this theory at variance with the recorded facts of our Parliamentary history for the past century and a half! While for many generations the forms of the ancient constitution of England have continued unchanged, the principle of growth and development has been at work, and has silently effected numerous and important alterations in all our governmental institutions. For instance, the prerogative of the crown to veto obnoxious measures presented for its sanction by the Legislative Chambers has never been invoked since the reign of Queen Anne. The undoubted right of the Commons to withhold supplies from the crown has not been exercised in a single instance since the Revolution of 1688. All important public bills are now submitted to Parliament by ministers of the crown, with the avowed sanction and express authority of the sovereign; and it has become a recognised and prominent part of the functions of the king's ministers that they shall be able to lead and control the two Houses of Parliament, and to carry on the government therein, by themselves undertaking the oversight and direction of the entire mass of public legislation. Moreover, the exercise of every branch of the royal prerogative is now subjected to free criticism in both Houses of Parliament; and although the standing orders for the exclusion of strangers are still retained, they are practically a dead

[g] Hats Prec. v. 2, p. 356.

letter; and so much publicity is allowed to the debates and proceedings as to justify the saying that 'the entire people are present, as it were, and assist in the deliberations of Parliament.'[h] As a natural consequence of these momentous changes, harmony has been established between the executive and legislative powers, in place of the jealousy and spirit of antagonism which were characteristic of the former system.

A proof of vital changes in the constitution.

This wide discrepancy between theory and practice—between the ordinary functions of the several branches of the legislature as defined in our old constitutional text-books, and the modern usages in respect thereto, affords unmistakeable proof that the constitution itself has really undergone a material alteration within the last 150 years, albeit these changes, for the most part, have been unnoticed by political writers. Formerly the obsolete privileges above enumerated were regarded as so many proofs of an admirable system of 'checks' and 'balances of power,' whereby the different parts of our complex political system were maintained in equipoise. They now remain as mere indications of ancient landmarks, which have ceased to be effectual restraints in the existing development of our institutions.[i]

Dormant powers of the crown and Lords.

And here it may be remarked, parenthetically, that because the crown and the House of Lords are precluded by modern constitutional usage from making direct use of the powers which originally appertained to them as distinct and independent branches of the legislature, it must not, therefore, be assumed that they are but of small account in their separate and individual capacity. Their ancient rights, though dormant, have never been disallowed; but are still held in reserve, in case of any sudden or violent attack upon their new

[h] May, Const. Hist. ed. 1871, v. 2, p. 53.

[i] As to general futility of 'checks and balances' in government, see paper, by T. M. Cooley, the learned American jurist, in the Int. Rev. v. 3, p. 317.

mode of operation. This may surely be affirmed of the royal veto, in the present state of our constitutional system, although, as a matter of constitutional practice, the system of parliamentary government has fortunately done away with the necessity for collisions between the crown and the people on questions of public policy or internal administration, and has caused all such matters to be decided within the walls of Parliament by the relative strength of existing political parties. The same principle holds good in regard to the two Houses of Parliament. While no formal alteration has taken place in the original limits of authority between the two co-ordinate and co-equal chambers of the legislature,—and it is now generally conceded that the proper function of the House of Lords is not to take a prominent part in the initiation of public bills, but to control, revise, and amend the measures of legislation which have received the sanction of the House of Commons,—nevertheless, if need be, it would be perfectly competent for the House of Lords to claim its ancient privileges, and to assume a more active share in the origination of measures which concern the general welfare of the community.

House of Commons under parliamentary government.

The principal change effected by the development of the English constitution since the Revolution of 1688 has been the virtual transference of the centre and force of the state from the crown to the House of Commons. Instead of prerogative government we now have parliamentary government. Instead of the will of the crown being paramount, or else engaged in direct conflict with the other branches of the legislature, we now find the constitutional influence of the crown, and of the great landowners, exerted in the House of Commons, through the instrumentality of members who obtain seats therein, expressly in order that they may uphold and carry out these legitimate influences. The introduction of members into the House of Commons for such a purpose,

however at variance it may be with the abstract idea of popular representation, has, indeed, become essential to the maintenance of monarchical institutions in Great Britain. Curtailed in the exercise of their original rights, as independent branches of the legislature, it has become impossible for the crown and the nobles to retain their proper share in the government of the country unless they are both fairly represented in that assembly wherein the supreme political power of the state is now concentred. This result has been attained by the growth of a system under which each of the three co-equal elements of the crown, the aristocracy, and the commonalty,—representing respectively the principles of authority, of stability, and of progress,—have been effectually, if not formally, incorporated into the Commons' House of Parliament.

Introduction of ministers therein.

By the formal introduction of the king's ministers into Parliament,—which took place in the reign of William III., but was not directly ratified by law until the reign of Anne,—the monarchical element in the constitution began to make itself felt in the House of Commons. The great advantages of this step were not at first appreciated, even by its promoters; but they gradually became apparent in the harmonious working of the machinery of government. As a natural consequence, it necessitated a recourse by the rival factions on both sides to a system of party organization, in order to give strength and consistency to their endeavours. 'For parliamentary government is essentially a government by means of party, since the very condition of its existence is that the ministers of the crown should be able to guide the decisions of Parliament, and especially of the House of Commons; and all experience proves that no popular assembly can be made to act steadily under recognised leaders except by party organization.'[1] No

Party government.

[1] Grey, Parl. Govt. ed. 1864, p. 49. May, Const. Hist. c. viii.; Austin, See further, as to the benefits of party, Plea for the Constitution, p. 34;

reliance can be placed on the support of a party 'occupying the position of a detached auxiliary force, ready to act on one occasion, to retire on another, and to be a perpetual object of anxiety to those whom they mean to serve, of hope to the enemy, and of speculation to the rest of the world.'[k] Seats in the House of Commons for the king's ministers and their adherents were obtainable from the first by means of various small boroughs, which were under the direct control of the Treasury, and of other boroughs which were subject to the influence of certain great families or wealthy proprietors, who were willing to dispose of the same in support of an existing administration.[l] Thus the government for the time being were always able to command from forty to fifty seats in a new Parliament, in addition to the natural strength of the party they represented.[m]

Property, not numbers, represented in the Commons.

In like manner, the holders of landed property throughout the country, and especially the great hereditary aristocracy, were able, in their own behalf, to control many of the smaller constituencies. The commanding influence thus exercised by the crown, and the landed gentry of the kingdom, over the election of members of the House of Commons, appears at first sight to be a departure from the strict rule of representation in a popular assembly. The case however assumes a very different aspect when it is considered that property, and bodies, or classes of men having

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Park's Lectures, pp. 61, 128; Burrows, Const. Prog. p. 80; Amos, Fifty Years of Eng. Const. p. 66; Mr. Disraeli's Speeches, in Hans. D. v. 153, p. 1304; *Ib.* v. 174, p. 1221; and see the Ed. Rev. v. 108, p. 277, in reply to an article in the West. Rev. v. 13, p. 402, condemnatory of party government. See also the arguments against party government in Brougham's Essay on the Effects of Party, in his Sketches of the Statesmen of the Time of George III.; Greg's Political Problems, c. x. (or Quar. Rev. v. 126, p. 394). Fitzjames Stephen, in Con. Rev. v. 23, pp. 1, 165; Syme, Rep. Govt. in England, 1881, c. iii.; and see Mr. T. E. Kebbel's review of the question, on both sides, in 19th Cen. v. 11, p. 378.

[k] Life of Earl Minto, v. 2, p. 383. And see Amos, Primer of Eng. Const. ed. 1875, p. 54.

[l] See Bulwer's Life of Palmerston, v. 1, p. 52.

[m] Grey, Parl. Govt. new ed. p. 227.

separate interests—not mere numbers—have been hitherto the acknowledged bases of representation in the House of Commons.[n] It is true that the interference of any lord of Parliament, or other peer or prelate, at elections is declared by a standing order to be a high breach of the privileges of the House of Commons,[o] and that the *voting* of peers is now distinctly forbidden by recent decisions. But the peers themselves have repeatedly disputed the force of this declaration, and even denied that they are incapacitated for voting at parliamentary elections;[p] nevertheless, it has been admitted by the most eminent constitutional authorities, including Lord John Russell, Sir Robert Peel, Lord Palmerston, and Mr. Disraeli, that there is 'a customary and due influence' which may be resorted to by all landlords over their tenantry, in the choice of members to serve in the House of Commons; and that the interference of peers at parliamentary elections, which was originally forbidden under widely different circumstances, ought not now to be accounted unconstitutional, if exercised with discretion and moderation. Occasional complaints have been made to the House, under peculiar circumstances, of the infringement of the standing order by peers or bishops, but the House has always evinced great reluct-

Interference of peers at elections.

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[n] See Russell, Eng. Const. ed. 1865, pp. xxxi.-xxxvi.; Disraeli, Hans. D. v. 187, p. 1955; v. 188, p. 224; v. 192, p. 998. And see Smith, Parl. Rememb. 1859, p. 3; Hearn, Govt. of Eng pp. 515–518.

[o] S. O. H. of Com. Jls. 1883, p. 6.

[p] See Hats. Prec. v. 3, p. 72; Anstey's Notes on the Reform Act of 1867, p. 106. On Oct. 10, 1872, at a revising barrister's Court in the county of Hereford, the name of the Marquis of Salisbury was struck off the list of claimants to vote at the county elections, because he was a peer of the realm. Leave was granted to appeal to the Court of Common Pleas, but the appeal was summarily dismissed by that tribunal (L. T. Rep. N.S. v. 27, p. 606). At an election of the University of Cambridge in Nov. 1882, two peers attempted to vote, but their votes were rejected. See L. T. v. 74, p. 83. By a later decision, this disability was declared to extend to Irish peers, who are not entitled to be upon the Register of Voters, unless actually sitting as members of the House of Commons. (Lord Rendlesham *v.* Tabor, L. T. Rep. N.S. v. 29, p. 679.) In confirmation of these decisions see *Ib.* v. 30, p. 795; May, Parl. Prac. ed. 1883, p. 719.

ance to proceed thereon.[q] For, in fact, the influence which is exercised by peers is mainly that which rightfully appertains to them as the guardians and representatives of vast hereditary estates; and there is a 'legitimate influence which a popular and respected landlord must always exercise in his neighbourhood.'[r] In a monarchical government, property must necessarily be in the hands of the few; and 'the law-maker must be a possessor of property, because the end of all legislation is the security of property.'[s]

Influence of peers in elections.

It is said that even in the United States, where a nearly universal suffrage prevails, the landed interest is so powerful, owing to the almost universal possession of property, that 'the great mass of the farmers, *when they choose to exert themselves*, are able to overrule the mob of the cities, and decide the policy of the nation.'[t]

Influence of property.

The extent to which the influence of property prevails in England at the present time is very considerable, notwithstanding the disfranchisement of so many small boroughs by successive Reform Bills. This influence is more or less exerted in every constituency; but it is only in the counties and in certain of the smaller boroughs that it usually affects the result of the elections. Mr. Gladstone admits that 'the criterion of property has assigned to it a considerable sphere of direct operation through plurality of franchise' enjoyed by 'a man of property in different capacities and constituencies,' which, he says, 'no one wishes to disturb.' Property has, also, 'a sphere of indirect operation, larger still.'[u] The larger manufacturing towns and cities are generally under the control of the commercial

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[q] See Mir. of Parl. August 6, 1832, p. 3588; Hans. D. v. 83, p. 1167; v. 95, pp. 1067, 1354; v. 159, p. 1569; v. 174, pp. 933, 945; v. 186, p. 1353; v. 190, pp. 801, 1976; v. 193, p. 1382; v. 197, p. 1294; Mac. Mag. v. 11, p. 476; and Ld. Palmerston's speech on the Ballot, Hans. D. v. 180, p. 425.

[r] Rep. Com^s. Parl. Elec. Com. Pap. 1868–9, v. 8, p. 17.

[s] Letter to Mr. Bright, by Henry Drummond, M.P., 1858, p. 36.

[t] Goldwin Smith, Mac. Mag. v. 11, pp. 418, 424.

[u] 19th Cen. v. 2, p. 545.

or manufacturing interests. Nevertheless, it was computed that in 1865 the thirty-one great governing families of England supplied 'one clear fourth of the English House of Commons.'[v]

Aristocratic element in House of Commons.

In the House of Commons, chosen in 1865, the aristocratic element—including sons and grandsons of peers and baronets, and others connected with the peerage by marriage or descent—consisted of 326 members, or about one-half of the House. Trade and manufactures were represented by 122, and the railway interest by 179 members.[w] And by an analysis of the House of Commons, elected in 1868, it appears that, notwithstanding the widely-extended franchise, 'nearly half the House of Commons belong to the landed nobility and gentry.'[x] In 'Notes and Queries'[y] we have a list of fifty members of the Reformed Parliament of 1869, who (so far as can be ascertained) are the direct lineal descendants of those who sat in the Long Parliament, in 1640. By the general election in 1874, it was computed that the aristocratic element in the House of Commons was reduced to 149 members.[z] But another calculation places this element at 170 members; the trade and manufacturing interests at 122; the railway and moneyed interests at 129; the liquor interests at 19; the legal element at 120; the literary and scientific interests at 85.[a] [By the general election in 1885, the aristocratic element in the House of Commons was reduced to 46 members; and that of 'landowners' to 71—barely a sixth of the entire House.[b]—Ed.]

Nomination boroughs.

And here it may be well to record the important services which were rendered to the state by the smaller or nomination boroughs before their disfranchisement. Some of the ablest and most uncompromising advocates of parliamentary reform have acknowledged an indebtedness to these boroughs for the introduction into the House of Commons of many of its most eminent and useful members, who could not otherwise have obtained entrance there; and for the representation in Parliament of various classes and interests which would else have failed to acquire the weight and influence therein to which they are justly entitled.

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[v] Sanford and Townsend's Gt. Gov. Fam. of Eng. 2 vols. London, 1865, v. 1, pp. 3–20.

[w] Essays on Reform, 1867, pp. 172, 327–329.

[x] Quar. Rev. v. 126, p. 278*n*.

[y] V. 3, 4th S. p. 190.

[z] Greg in Con. Rev. v. 23, p. 874*n*.

[a] Fin. Reform Alm. 1877, p. 146.

[b] The Spectator, 1885, p. 1692.

For example, the small borough of Arundel, which before the Reform Act of 1867 had but 174 registered electors, 'represented the largest constituency in England, because for many years it was the sole English constituency which returned a Roman Catholic to the House of Commons.'[c] Subsequently, in 1870, the Isle of Wight returned the only Roman Catholic member representing a constituency in England or Wales.[d] At the general election in 1874 no Roman Catholic was returned for any constituency in England, Wales, or Scotland.[e]

The nomination boroughs served also to redress, in however irregular a manner, the balance of authority between the several branches of Parliament, which would else have been overthrown by the increasing power of the Lower House. This is emphatically true of the legitimate authority and influence of the crown in the House of Commons, which has been heretofore maintained, under our parliamentary system, chiefly by means of the control exercised by government over certain of the smaller constituencies. For, as a general rule, nearly all our ministers of state, and eminent politicians of the class out of which ministers are necessarily chosen, have had recourse to the small boroughs for a seat in Parliament.[f] Even when able to command a county constituency, ministers of the crown have generally preferred to represent small boroughs, on account of the comparative immunity thereby obtained from the incessant demands upon their time and attention on behalf of their constituents, which are so great a tax upon members who represent populous constituencies.

Thus, when Mr. Canning was appointed Foreign Secretary, and leader of the House of Commons, in 1822, he retired from the representation of Liverpool, and was elected for the borough of Har-

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[c] Hans. D. v. 189, p. 594.

[d] *Ib.* v. 201, p. 57.

[e] Ld. Houghton in Fort. Rev. v. 23, p. 211.

[f] Grey, Parl. Govt. p. 195; Russell, Eng. Const. pp. xxxv., xlix.; Austin, Plea for the Const. p. 28. Earl Derby, Hans. D. v. 188, p. 1795; Ed. Rev. v. 135, p. 532.

wich, considering that the duties entailed upon him as member for that great commercial town were incompatible with the faithful discharge of his functions as a minister of state.[g] In like manner, Sir Robert Peel, Lord Palmerston, Lord Stanley, Sir G. Grey, Sir Stafford Northcote, and other noted parliamentary leaders, have almost invariably sat for small boroughs, and have refused to represent large constituencies. Again, statesmen of the highest eminence who, through their connection with great governing families, have obtained seats for counties, have not seldom been obliged to resort to boroughs in order to retain a seat in Parliament when they have chanced to incur the displeasure of their numerous electors. For example, in 1835, Devonshire rejected Lord John Russell, and compelled him to seek a refuge in Stroud; in 1834 Lord Palmerston was defeated in Hampshire, and afterwards sat for Tiverton; in 1852 Sir G. C. Lewis was defeated in Herefordshire, and was obliged to have recourse to Radnor; in 1847 Macaulay was defeated at Edinburgh, and kept out of Parliament for five years. It has been computed that out of some sixty-three members, in the last House of Commons, who either held, or were qualified to hold, the highest administrative offices, by far the greater proportion represented small constituencies. The more populous boroughs only contributed one-fifteenth of this governing element.[h]

Local celebrities the choice of the people.

In fact, it is notorious that there has been, of late years, a decided and increasing disposition on the part of large boroughs to make choice of local celebrities, or persons of limited reputation, to represent them in Parliament, in place of electing men possessed of statesmanlike qualities, administrative experience, or intellectual gifts.[i]

Owing to the disfranchisement of the smaller boroughs, the influence of a 'patron,' able to return some friend of his own, or some leading member of his party, in want of a seat, has been mostly got rid of. The tendency in boroughs now is to select either a very rich or a 'local' candidate, instead of men capable of legislating for the interests of the whole empire, and as little as possible hampered by local ties and prejudices.[j]

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[g] Stapleton, Canning and his Times, p. 334. And see Grey, Parl. Govt. p. 121.

[h] See Fras. Mag. v. 72, p. 153.

[i] See illustrative tables in Ed. Rev. v. 106, pp. 273-277, and speeches by Mr. Gladstone and Mr. Disraeli, &c., Hans. D. v. 183, pp. 488, 874, 904, 1385, 1883, 1904.

[j] Mr. E. H. Knatchbull-Hugessen, M.P., in Mac. Mag. v. 27, p. 72.

If, therefore, the few remaining small boroughs are disfranchised, it will become indispensably necessary to find some other mode of entrance into the House of Commons for the great statesmen to whom the administration of public affairs is or may be entrusted.[k]

Effect of abolition of nomination boroughs.

In 1871, Mr. Henry Fawcett, a thoughtful and influential leader of the Liberal party in the House of Commons, testified that, since the abolition of nomination boroughs, 'important opinions are unrepresented, and considerable sections of the community are virtually disfranchised,' because 'an extended suffrage gives a predominant popular feeling a better chance of asserting itself,' and 'excludes men from the House of Commons who value independence more than parliamentary honours.[l] And in 1877, Mr. Gladstone deplored 'the rapid and constant advance of the money power' in attracting the favour of constituencies; and 'the reduction, almost to zero, of the chances of entrance into Parliament for men who have nothing to rely upon but their talent and their character.'[m]

Peculiar excellences of our representative system.

It has been justly observed that 'the history of the world affords, as yet, no example of the permanent success of parliamentary government with a legislature formed on the strict principles of popular representation.'[n]

'Parliamentary government is a machine of the most exquisite delicacy.' 'America during the last five years has only repeated to the world the lesson that had already been taught by France, that, if

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[k] See the protests of Lds. Ellenborough and Selkirk on the third reading of the Reform Bill (1867), Hans. D. v. 189, p. 953. And see some thoughtful observations on 'the wholesome organic connection between university life and public life,' which, so long as nomination boroughs existed, made it possible for young men of ability and ambition to achieve political distinction in England at a comparatively early age, without long purses, or a 'complete surrender of intellectual individuality,' in the Memoir of Edward, Ld. Lytton, prefixed to his collected speeches, by his son, v. 1, pp. ix-xii. And see Bagehot's paper on the Reform Act of 1832, in Fort. Rev. v. 20, p. 573.

[l] Fort. Rev. N.S. v. 10, pp. 408, 409.

[m] 19th Cen. Nov. 1877, p. 555.

[n] Grey, Parl. Govt. p. 67.

you will have democracy, you must have something like Cæsarism to control it. The feeble and pliable executive of England is wholly unsuited to such an electoral body. A government that yields, and must yield, to the slightest wish of the House of Commons, is only possible so long as that House of Commons is the organ of an educated minority. Such an instrument of government has never yet, in the history of the world, been worked by a legislature chosen by the lower class.'.[o]

Peculiar excellences of our representative system.

The House of Commons owes its success as an active part of the supreme authority, and its peculiar excellences, to 'what are regarded as defects and departures from principle in our representative system;' and 'it is chiefly by means of these defects that the ministers of the crown have been enabled to obtain the authority they have exercised in the House of Commons.'[p] Able to rely upon the support of a certain number of steadfast adherents, every administration in turn has hitherto possessed, in general, sufficient power to conduct the government of the country consonantly to the best and most enlightened opinions, even though in opposition to popular prejudices, or superficial ideas which might temporarily prevail throughout the kingdom. The policy of an administration charged with the government of the British empire must indeed, of necessity, be a reflex of the best-informed opinion of the nation.[q] But this opinion 'is expressed, not by the clamorous chorus of the multitude, but by the measured voices of all classes, parties, and interests. It is declared by the press, the exchange, the market, the club, and society at large. And it is subject to as many checks and balances as the constitution itself; and represents the national intelligence rather than the popular will.'[r] And, after all, it should be remembered that while public

Control of public opinion.

[o] Quar. Rev. v. 119, p. 279.

[p] Grey, Parl. Govt. pp. 67, 68. And see Ld. Dudley's speech in Knight's Hist. of Eng. v. 8, p. 282.

[q] Macaulay, Hist. Eng. v. 3, p 543; May, Const. Hist. v. 1, p. 430.

[r] May, Const. Hist. v. 2, p. 253; see also Park's Dogmas, pp. 88, 97; and Mr. Walter's observation in Hans. D. v. 228, p. 497.

opinion, in a free state, must ultimately determine into whose hands authority shall be entrusted, and what shall be the general policy of government, it is chiefly within the walls of Parliament that the contest for power between the rival candidates for office is conducted; and that one of the most important functions of Parliament is that of being 'an instrument for the instruction of the nation, and for enabling it to arrive at just and wise conclusions on matters affecting its welfare.'[s]

Creation of public opinion.

The custom which has grown up within the present generation of members meeting their constituents during the recess, to address them upon the political topics of the day, and to invite inquiry and discussion upon the course taken by their representatives in Parliament, is 'one of the most powerful and beneficial engines for the creation of a moderate, temperate, tolerant, yet clear and definite public opinion.'[t]

'Public opinion determines, in the last resort, to what hands authority shall be entrusted; for though the ministers are the servants of the crown, and are appointed by the sovereign, yet as the sovereign must choose ministers who can command the confidence of Parliament, it is practically the people who decide, through their representatives, by whom the powers of government shall be wielded. There is, however, a vast difference in the effect produced by giving to the people, instead of the power of nominating their rulers by direct election, only an indirect control, through their representatives, over the selection of the ministers by whose advice the powers of the crown are exercised.'[u] Latterly, however, ministers of the crown have adopted this method of vindicating their conduct and policy, an

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[s] Grey, Parl. Govt. pp. 27-37. And see Hans. D. v. 185, p. 1905, and v. 233, p. 1630. Also, some weighty observations in Bagehot, on the Eng. Const. pp. 22, 205; and Amos, Fifty Years of Eng. Const. p. 461.

[t] Fort. Rev. v. 4, p. 60.

[u] Grey, Parl. Govt. p. 25; see also Mill on Rep. Govt. p. 96; Fort. Rev. v. 18, p. 189.

innovation upon constitutional usage of very questionable propriety.[v]

How essential, therefore, is it that Parliament should consist of the most intelligent, educated, and enlightened men that are to be found in the whole community!

Importance of a strong government.

In order that the ministry may be in a position to devise and recommend to Parliament a policy that shall commend itself to the highest intelligence of the country, it is indispensable that they should have sufficient strength in the popular assembly to enable them to withstand the pressure of temporary political excitement. Prior to the passing of the first Reform Bill, there was no impediment of this kind, but thoughtful politicians foresaw, as an inevitable consequence of that measure, that parliamentary government would become more and more difficult and embarrassing. Special attention was bestowed upon this subject by Mr. J. J. Park, who at that period filled the chair of English Law and Jurisprudence at King's College, London. In a course of lectures on the theory and practice of the constitution, delivered before that institution, Mr. Park pointed out with great force and perspicuity the altered relative position of 'King, Lords, and Commons,' by the establishment of parliamentary government, to which attention has been directed in the preceding pages. And in a petition to the legislature which he drafted when the Reform Bill was under consideration, Professor Park strongly urged the necessity for making legislative provision to ensure 'a moderate preponderance of the influence of the crown in the Houses of Parliament, so as to preserve the government there carried on from factious intrigue, and daily and capricious opposition, and to reserve that opposition for occasions of real misconduct or misjudgment.'[w]

Authority of the crown in Parliament weakened.

But in 1832 the Reform Bill became the law of the

[v] See Hans. D. v. 209, p. 55.

[w] Park's Lectures on the Dogmas of the Const. p. 147.

The Reform Act.

land.[x] The passing of this measure was of vital necessity. The unreformed House of Commons had done excellent work in its time. But its members were not adequately impressed with a sense of the growing wants of the nation, and it had failed to legislate for the people after the close of the great French war as their necessities required. A readjustment and enlargement of the constituent body was therefore imperatively demanded.[y] By the Reform Act the representative power was taken away from fifty-six boroughs, and reduced in thirty-one others. The representation of no shire was either taken away or reduced. But new members were given to thirty-five counties and to forty-two boroughs. At the same time, the county franchise was extended, and a uniform ten pound household franchise substituted for the various borough franchises then in operation.[z] Thus the representation of the people was placed upon a wider basis, by the introduction of the commercial and manufacturing classes—which, ever since the peace of 1815, had been growing in wealth and importance—to a share of political power. In its immediate results this great measure was just and beneficial in its operation. At the same time, by increasing the weight and influence of the House of Commons in public affairs, while it diminished the means previously at the disposal of the crown for exercising a constitutional control over the proceedings of Parliament, it served to render parliamentary government a more onerous undertaking. The preservation of the English constitution, in its integrity, and the carrying on of the Queen's Government in connection

[x] The special reasons which necessitated the first Reform Act are well stated by Mr. Gladstone, in the 19th Cen. v. 2, p. 541. See also Grey's Corresp. with William IV. v. 2, p. 30. And the Duke of Wellington's Memorandum on Reform which points out the beneficial effects of the influence exercised by peers, and of property holders in general, over the deliberations of the H. of Com. and the authority of the executive government therein. Well. Desp. 3rd S. v. 8, pp. 135, 337.

[y] See a paper by A. V. Dicey in Fort. Rev. v. 33, N.S. p. 116, on the Reform Act of 1832 and its critics.

[z] 2 Will. IV. c. 45.

with a reformed House of Commons, has become increasingly difficult since the second Reform Act of 1867. This measure has taken the control of the representation out of the hands of the upper and middle classes—the propertied classes—and conferred it upon the wage-receiving classes, thereby transferring electoral supremacy from capital to labour; and by lowering the average intelligence, education, and foresight of the electoral body, it has reduced in equal ratio the average wisdom, capacity, and character of the representatives.[a] The highest constitutional authorities, not only in England but even in the United States, formerly concurred in declaring the franchise to be a trust bestowed on the voter, to be exercised for the benefit of the nation, and not a personal right.[b] Since the basis of representation is no longer a limited constituency acting on behalf of those who were not represented, but has been widened so as—in theory, though not yet in practice—to include all the householders of the nation, the franchise should rather be regarded as a political privilege, to be exercised for the common good.[c]

Effect of the Reform Act 1867 on the constitution.

Some, indeed, contend that the progress of education and general enlightenment would avert many, if not all, of the evils anticipated from entrusting the masses with political power. But the experience afforded by the working of democratic institutions in Australia,[d] in America,[e] and in France under the Em-

Evils of enlarging the franchise.

[a] See Greg's 'Rocks Ahead' in Con. Rev. May, 1874. And an article on the dangers of Democracy, in West. Rev. v. 50, p. 390.

[b] Compare an article in the North Am. Rev. v. 101, pp. 111-116, on 'The Democratic View of Democracy' with Russell, Eng. Const. p. xxxi.; Tremenheere, The Franchise a Privilege, and not a Right; Ld. Palmerston on the Ballot, in Hans. D. v. 180, p. 426.

[c] See Mr. Gladstone, Hans. D. v. 203, pp. 1030, 1031; Mr. Disraeli, *Ib.* v. 208, p. 1113, v. 219, p. 250; Amos, Fifty Years of the Eng. Const. pp. 33-63.

[d] Hans. D. v. 182, pp. 613, 2108; Law Times, Aug. 10, 1867, p. 233. And see deplorable accounts of the working of a democratic constitution in Australia, and especially in the Colony of Victoria. West. Rev. v. 33, p. 1. Dangers of Democracy, *Ib.* p. 480. The statements in this Review are supplemented and confirmed by letters in 'The Colonies' newspaper, May 13, 1876, p. 131. See also Fort. Rev. v. 20, N.S. p. 43.

[e] For the theory of the constitution

pire,[f] does not justify this conclusion. On the contrary, we have every reason to fear that a wide extension of the suffrage to a class who are less instructed, and less capable of apprehending political questions, than those who are now enfranchised, must have a downward tendency. Rival parties will bid against each other for the support of this new portion of the national constituency; and in order to obtain it must adopt their views, and pander to their prejudices. Thus, by sure degrees, the interests of the nation will be subjected to the ultimate control of 'its more ignorant, instead of its more educated classes—of its lowest instead of its highest intellects.'[g] The transference of power to a class of men who are incapable of exercising a sound and enlightened judgment upon political questions, who are full of misapprehensions concerning the province and purposes of government, and are ignorant of the causes which determine their own economical condition, must be fraught with the greatest peril to the noble institutions of England, which have been the safeguard of liberty, and are the admiration of the world. 'Hardly any other feature of our parliamentary system appears so ominous to a thoughtful observer as the growing exclusion of young men from the House of Commons;' 'perverted—as the nomination boroughs undoubtedly were—to a very large extent, they brought into the House of Commons a far larger proportion of young men of promise and genius than have ever, under any other system, entered its walls.'[h]

For a careful statement of the main arguments against any further reform of Parliament in a decidedly democratic direction,—

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of the United States, see Dub. Rev. v. 29, N.S. pp. 494-508. For its practice, see Tremenheere's Eng. and Am. Const. compared; Grey's Parl. Govt. new ed. pp. 155-184; and Jenning's Eighty Years of Repub. Govt. in the United States.

[f] See Ed. Rev. v. 122, p. 272; Fras. Mag. v. 72, p. 158; Hans. D. v. 182, p. 2110.

[g] See Fras Mag. v. 72, p. 158.

[h] W. E. H. Lecky: N. Am. Rev. v. 126, pp. 71-76.

pointing out the probable effects of certain specific changes, and showing how a deterioration in the House of Commons would necessarily re-act upon the national character,—see Professor Austin's Plea for the Constitution, London, 1859, pp. 16–42. See also Report of the Lords' Committee, in 1860, upon the probable result of a reduction of the franchise.[i]

Effects of democratic reform upon the authority of the crown in Parliament.

But in view of the tendency of recent legislation, we must anticipate that, ere long, the few remaining small boroughs will be disfranchised and absorbed into larger constituencies. The disastrous consequences of any such change may be easily inferred from the explanations already given as to the assistance rendered by the small boroughs to the work of parliamentary government.[j] It is already but too evident that the weak point in our political system is the feebleness of executive authority. Mr. Pitt foresaw what is now happening when he said, 'the part of our constitution which will first perish is the prerogative of the king, and the authority of the House of Peers;'[k] and Mr. Disraeli has observed, with equal truth, that 'in this age the elements of governing are daily diminishing, the power of governing nations is every day weakening.'[l] Mr. Bagehot, in the introduction to the new edition of his work on the 'English Constitution,' published in 1872, admits that he is 'exceedingly afraid of the ignorant multitude of the new constituencies.' As a class, the new voters are as yet unconscious of the extent of their power, and decidedly unfit to exercise it wisely. But their numbers have made them virtually supreme in the country, and unless, as heretofore has been the case, they should defer to the guidance of the aristocratic and moneyed interests,

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[i] Mr. Lowe's speech, Hans. D. v. 187, pp. 788–799; and Mr. Goschen's speech, Hans. D. v. 235, p. 558, deprecating an extension of the county franchise.

[j] See *ante*, p. 13, Earl Russell in Hans. D. v. 189, p. 445.

[k] Stanhope's Life of Pitt, v. 1, p. 133. And see Sir R. Peel's remarks on the effects of the Reform Bill, Hans. D. v. 182, p. 1059.

[l] Hans. D. v. 170, p. 430. In the debate on the Address in 1852, Mr. Disraeli remarked that he thought it 'one of the great misfortunes of our time, and one most injurious to public liberty, that the power of the Crown had diminished.' *Ib.* v. 119. p. 138.

the result must be disastrous. Before and even after the Reform Act of 1832 the prominent leaders in the Commons, whether of the Government or of the Opposition, were principally of the aristocratic class. They are now, and especially since the Reform Act of 1867, being gradually supplanted by the middle-class element. Wealth, not birth, is now the prevailing influence in the Commons, whereby the aristocratic element, and likewise the political influence of the House of Lords, are proportionably weakened. 'The full effects of the last extension of the franchise,' says a writer in the 'Nineteenth Century,'[m] 'have not yet had time to declare themselves, but it is surely impossible to maintain that the experience of the past twelve years—with its revelations of popular fickleness and popular excitability, of decline in the authority and repute of Parliament, of platform dictation, of ministerial policy, and of ministerial gropings for the opinion of the platform—has not confirmed the gloomy forebodings' of those who predicted disastrous consequences from this measure. Anticipating, therefore, that a further reform of Parliament will inevitably lead to further democratic encroachment, it should be the endeavour of practical statesmen to devise some plan to strengthen the authority of the ministers of the crown in Parliament *pari passu* with the concession of a reformed and extended franchise. But such an attempt, to be successful, must be urged upon proper grounds. It should distinctly claim for the monarchical and aristocratic elements in our constitution as their right, that they should be adequately represented in that branch of the legislature which has now become the source and centre of political power. No considerations of mere expediency would warrant the recognition of such a demand. No attempt to increase the authority of the

Necessity for conserving the monarchical and aristocratic elements in our constitution.

[m] V. 8, p. 643.

crown in the House of Commons merely because it was abstractedly desirable, would be likely to succeed. But if it could be shown that—unless we are willing to admit the right of the crown, and of the landed gentry, to a proportionate influence in the councils of the reformed popular assembly—we must be prepared to acquiesce in the curtailment of their just share in the control of public affairs, in the overthrow of the principles of English constitutional monarchy, and in the virtual establishment of a democratic form of government, the bulk of the nation would, it may be hoped, be ready to acknowledge the justice of such a concession, and to discern in it, moreover, a reasonable solution of a great political problem.[n]

In 1873, Mr. Disraeli, adverting to the great questions which have been disposed of in our day, pointed out that other questions of equal, if not greater, importance must soon engage public attention, and especially 'the attributes of a constitutional monarchy; whether the aristocratic principle should be recognised in our constitution, and if so, in what form; and whether the Commons of England shall remain an estate of the realm, numerous, but privileged and qualified, or whether they should degenerate into an indiscriminate multitude.'[o]

Representation of landed interest.

Thus far, we have seen, the landed proprietors of England, the natural guardians of law and order, have no cause to complain of being inadequately represented in the House of Commons. It is true that, since the Reform Bill of 1832, the landed interest is no longer supreme; and that the commercial and manufacturing interests have acquired a share of power, to which, by their growth and development, they had become justly entitled. But although, by this great measure, the House of Commons became a truer representation of the people, the groundwork of our electoral system was

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[n] See Hans. D. v. 185, pp. 230-232. And an article—by the Marquis of Salisbury (?)—on the 'Political Lessons of the War' in the Quar. Rev. v. 130, p. 256.

[o] Black. Mag. v. 118, p. 242.

not changed. Even since the later Reform Act of 1867 property has not wholly ceased to be regarded as the rightful basis of representation, although, in the changes of the franchise, effected since 1831, the tendency has been increasingly to regard the claims of occupancy rather than that of ownership. But should ever the theory of representation according to population find favour and acceptance, the influence of the aristocracy in the Commons' House of Parliament will be materially diminished, if not altogether annihilated.

Statistics of representation.

In a paper read by Professor Leone Levi, before the British Association, in September 1865, on the Statistics of Representation, it is computed that if representation in England were based upon population, 'for every 100 votes there should be given 4 to the upper, 32 to the middle, and 64 to the working classes. If, on the other hand, it were in proportion to the amount of taxes paid by each, of every 100 votes 83 should be given to the upper classes, 13 to the middle, and 4 to the working classes.' This will afford some idea of the vast social revolution which would be effected by the introduction of representation according to population into the electoral system of England.

This contingency, indeed, has not yet arrived; but the danger is so imminent, and the practical difficulties of government are so increasingly apparent, that our statesmen are becoming impressed with the necessity for strengthening the authority of the crown in Parliament, as well as for improving the machinery of representation, in connection with any further extension of Reform.

Earl Grey's suggestions on reform.

Various suggestions to this end have been offered by political thinkers to which it may be useful to direct attention. Thus, Earl Grey, in a revised edition of his able essay on 'Parliamentary Government,' has urged that in connection with any further measure of parliamentary reform provision should be made,—1. For the representation of minorities; 2. For the apportionment of a certain number of seats in the House of Commons to members representing universities, the learned professions, and the principal industries and trades; 3. For

the election, by the House itself, of from twelve to fifteen *life members*, to be chosen by a 'cumulative vote,' in batches of three at a time, from amongst the leading men of different political parties.

By a 'cumulative vote' is meant the principle of giving to every elector as many votes as there are members to be chosen by the constituent body, with the option of giving all his votes to a single candidate, or of dividing them amongst the several candidates proposed. By this process minorities would have a fair opportunity of ensuring the election of their favourite candidates. This mode of voting was approved by Mr. J. Stuart Mill.[p] It has also obtained the qualified support of Earl Russell.[q]

4. For the election, by the House, at the commencement of every Parliament, and for the duration of the Parliament, of a limited number of persons, to be proposed for membership in a list which should be framed and submitted to the House by the existing administration. This would afford an opportunity for the introduction into political life of young men of talent, who could be trained for the future service of the state; it would provide seats for such holders of political offices as were required to be present in the House of Commons, but could not otherwise find entrance therein; and it would confer upon the ministry the inestimable benefit of a compact body of staunch supporters, who, while they contributed to uphold the authority of the crown, were themselves approved of by the suffrages of the House of Commons. The selection of this class of

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[p] See his Rep. Govt. p. 141.

[q] Eng. Const. Introd. p. 51. See Grey's Parl. Govt. p. 203. And it has been successfully applied to the School Boards in England and Wales, chosen under the Elementary Education Act, 1870. See Hans. D. v. 207, pp. 1525–1538. See Statistical Returns as to the Cumulative Vote at these Elections: Com. Pap. 1877, v. 67, p. 571. And to School Boards in Scotland by Act 35 and 36 Vic. c. 62, sect. 12; Hans. D. v. 211, p. 1209. And it has been proposed to extend it to Municipal Elections, *Ib.* v. 217, p. 482; v. 225, p. 1425. Rep. Com^e. H. of Com. on Local Govt. (Ireland), 1876, Index, p. 439. And in regard to Plural voting at Municipal Elections, see *Ib.* p. 484. But the principle itself is still considered as open to grave objections; see Duke of Argyll, *Ib.* v. 229, p. 192. For other instances of its application, see Law Mag. N.S. (1872), v. 1, p. 206.

members being made by lists, a majority of the House, acting in concert, would have the power of naming the whole; and the lists being presented for the sanction of the House by ministers, the agreement thereto would be a question of confidence. Finally, his lordship proposes that members of the House accepting parliamentary offices should be relieved from the necessity of being re-elected by their respective constituencies.[r]

Objections to Earl Grey's proposals.

The acknowledged reputation of Earl Grey as a political philosopher, and his practical experience in administration, entitle these suggestions to a respectful hearing. It is nevertheless worthy of remark, that other men, of equal consideration, have differed from him in regard to certain portions of his scheme. Thus, Professor Austin strenuously denounces the introduction of an electoral qualification consisting in the mere possession of intelligence and knowledge, apart from property.[s] Earl Russell contends that a graduated franchise, as a means of 'averting the dangers of universal suffrage, and of unlimited democracy,' would be an 'invidious' novelty.[t] And a writer in the 'Saturday Review' protests against the 'elaborate complications of electoral machinery which are recommended by Lord Grey and Mr. Hare,[u] in order to afford artificial protection to the minority, as being fit only to serve as intellectual amuse-

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[r] Grey, Parl. Govt. pp. 204 240. For a careful review of the literature of this subject, see an article on The Machinery of Politics and Proportional Representation, in the Am. L. Rev. v. 6, p. 255. It gives the origin and meaning of 'Gerrymandering.' To the same effect, see Mr. H. R. Droop's paper on the various methods of Electing Representatives, read before the Statistical Society on 12th April, 1881, with the discussion thereon; Statis. Soc. Jour. v. 44, pp. 141-202. And a debate in the New Zealand H. of Rep. July 6, 1881, in favour of the application of 'Hare's System' to representation in both Houses. The motion did not pass. Mr. L. Courtney's paper in 19th Cen. v. 6, p. 141. Amos. Fifty Years of the Eng. Const. pp 54 64. And Mr. Buckalew's Rep. of Sel. Com^e. to U. S. Senate in 1868 9, No. 271.

[s] Plea for the Const. pp. 21, 22. And see some pithy remarks to the same effect in Henry Drummond's Letter to Mr. Bright (London, 1858), p. 35.

[t] On the Eng. Govt. new ed. p. li.

[u] The Election of Representatives, by Thos. Hare, 4th ed. London, 1873; and Hare's paper in Fort. Rev. v. 23, p. 75.

ments;' declaring with great justice that 'the minority is more or less effectually protected at present by the limitations of the franchise, by the dissimilarity of different constituencies, and by their great inequality in numbers.'[v] This, indeed, is undeniable, so long as the interests of the minority continue to be secured indirectly and unconsciously by the number and variety of the constituencies into which the electoral body is divided; but the extreme liberal party contended for a redistribution of electoral power, which they claimed would secure a more complete representation of the people.

The representation of minorities was suggested by Earl Grey in a report from a Committee of the Privy Council, in 1850, on the Constitution of the Cape of Good Hope, as proper to be applied to the election of legislative councillors in that colony.[w] A similar principle was introduced by Earl Russell into the Reform Bill which he laid before the House of Commons in 1854,[x] and approved by Sir G. C. Lewis.[y]

Reform Bill, 1867.

As at first introduced, this Bill contained certain checks and limitations, which, in the progress of the measure through the House of Commons, were either modified or done away with. The principal provision of this kind was to allow a dual vote, in boroughs, in

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[v] Saturday Review, February 25, 1865 The objections to the principle of the representation of minorities are very admirably put in a paper by Mr. J. Boyd Kinnear, in the Fort. Rev. v. 4, p. 49, &c. And see arguments against the system proposed, by Mr. Hare and Mr. Mill, of 'plurality of votes,' and, 'personal representation,' in Hearn, Govt. of Eng. c. xix. and in the Ed. Rev. v. 122, p. 277. On the other hand, for arguments in favour of Mr. Hare's scheme of 'personal representation' see Mr. Mill's speech in Hans. D. v. 187, p. 1343. See also his ingenious speech in favour of conferring the franchise upon women, *Ib.* p. 817. Though this proposition was rejected by the House, it has been argued that by a legal construction of the new Act females are entitled to the franchise. See Anstey's Notes on the Reform Act of 1867, pp. 74-104. But the question was disposed of by the Court of Common Pleas on Nov. 7 and 9, 1868, who decided on appeal from a decision of a revising barrister that women were legally incapacitated from voting under the said Act. L. T. Rep. N.S. v. 19, p. 534. See debates on Bills to remove the political disabilities of women, Hans. D. v. 201, pp. 194, 607; v. 206, p. 68; v. 211, p. 1; v. 223, p. 418; v. 228, p. 1658; v. 234, p. 1362.

[w] Grey's Col. Pol. v. 2, p. 456.

[x] Hans. D. v. 130, p. 498.

[y] Ed. Rev. v. 100, p. 226. See Lewis's Letters, p. 283; also Tremenheere's Prin. of Govt. [1882]. For debates on motions for the partial introduction of the principle of the representation of minorities, see Hans. D. v. 188, pp. 1037-1068; v. 189, pp. 433, 535, 1125; v. 192, p. 960; v. 212, p. 890. And see Fras. Mag. v. 72, p. 155.

certain cases. It has been computed that, through the agency of the dual vote, some 300,000 new electors of the middle and upper classes would have been raised up to counterbalance the votes of some 100,000 working men already on the register, and of another 100,000 who would have been enfranchised by the Bill as it stood at first. Other checks were established—by the permission to use voting papers; by requiring a two years' residence to give a vote in boroughs, because they did not pay their own rates; and by the provision refusing the franchise to compound householders. But all these limitations were swept away, and, by the abolition of 'compound householders,' an immense addition was made to the constituent body.[a] But, by returns laid before Parliament in 1869, it appears that the constituent body in England and Wales was doubled by the new Reform Act. In counties the electors were increased from 542,633 to 791,916; and in boroughs, from 514,026 to 1,220,715.[a] In round numbers, a total of 2,000,000 voters, which, deducting 10 per cent. for plural votes and other casualties, leaves a constituency of 1,800,000 to a total population of 22,700,000, or, to an adult male population, by the census of 1870, in England and Wales, of 5,753,000.[b] Earl Grey considered that it would be the tendency of the new Reform Act 'to substitute, for the influence of old connection and the territorial power of great families, the bare influence of money in its lowest and most degrading form.' This influence, he thought (as was the other) would be exercised through the small boroughs; and therefore he advocated 'the plan of uniting these boroughs in groups for the purpose of forming constituencies sufficiently numerous to give a hope of their independence.' This, he contended, would be far better than their total disfranchisement, as 'it is desirable to keep this element of small towns in the representation.'[c] But the system of grouping boroughs, though it has worked successfully in Scotland and Wales, has not found favour in England. It was one of the features of the Reform Bill of 1866 which inspired general dissatisfaction,[d] and the resolution in favour of it was rejected by the House of Lords.[e]

Reform Bill, 1867.

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[a] Ed. Rev. v. 126, pp. 548, 551, and 553.

[a] L. T. Oct. 16, 1869, p. 421. And see Mr. C. Anstey's paper in 'Recess Studies,' p. 351.

[b] Mr. Disraeli, Hans. D. v. 207, p. 852; Com. Pap. 1873, v. 53. A later return gives the registered electors of England and Wales at 2,377,761; of Ireland, at 231,265; of Scotland, at 302,313. Com. Pap. 1877, v. 68. By decisions of Judges Denman and Bowen, in Nov. 1881 (in Bradley *v.* Baylis, and two other cases, on appeal from decisions of revising barristers), the number of electors in borough constituencies has been largely increased, the franchise being distinctly conferred on all separate tenements in the same house. L. T. v. 72, pp. 75, 79. But, on appeal, two out of these three decisions were reversed. *Ib.* p. 129.

[c] Hans. D. v. 189, p. 531.

[d] *Ib.* p. 540–575.

[e] *Ib.* p. 592.

The second part of the new Reform Act provided for the redistribution of seats. It empowered Manchester, Liverpool, Birmingham, and Leeds to return three members each, which, it was supposed, would usually confer a seat upon the party in the minority in these places; no boroughs were disfranchised by this Act, but thirty-eight boroughs, having a population of less than 10,000 each, were to return one member only. Nine new boroughs, to return one member each, were enfranchised; also the borough of Chelsea to return two members. Merthyr Tydvil and Salford to return each two members; and the Tower Hamlets to be divided into two divisions, and each to return two members. Thirteen counties to be subdivided, with two members for each division; and the University of London to be empowered to return one member. But the anomalies of the present system—under which a minority of the whole population of the Kingdom, dwelling in represented towns, returns to Parliament a far greater number of members than the majority, who reside in counties, are clearly shown in a paper by Mr. E. H. Knatchbull-Hugessen, in 'Mac. Mag.' Nov. 1872. See also debate in the House of Commons, on May 6, 1873, on Sir C. W. Dilke's motion, to resolve, 'That it is desirable to redress the inequalities of the distribution of electoral power in England, Scotland, and Ireland.' And on Mr. Trevelyan's Bills to introduce household franchise in English counties.[f] And on Sir C. W. Dilke's motion, on July 15, 1875, 'That it is the duty of the Government to cause inquiry to be made into the various methods of bringing about a juster distribution of political power, with a view of securing a more complete representation of the people.'

His plan for increasing the strength of ministers in Parliament.

But these objections are only aimed at those recommendations of Earl Grey which are designed to create a counterpoise to the diminution of aristocratic or territorial influence in the House of Commons, as a result of changes effected in the representation by further measures of parliamentary reform; they do not at all affect the integrity of his plan for obtaining a moderate increase of the power of ministers in Parliament, which has already become 'a matter of urgent necessity.'

In the new edition of his Essay, his lordship has pointed out with great force and clearness the growing evils arising from the want of sufficient power in the House of Commons on the part of

[f] On July 23, 1873, on May 30, 1876, on June 29, 1877, and July 7, 1875. It has been calculated that the effect of this measure would be to treble the number of voters in the counties. Hans. D. v. 229, p. 1468; v. 235, p. 524.

ministers.[g] We are here reminded of an anecdote told by Lord Brougham, in the House of Lords, in 1847. In conversation with Bishop Burnet, King William III. once remarked that he had no very clear opinion whether a monarchical or a republican form of government was the best, for he saw many reasons in favour of both. 'But,' said his Majesty, 'I am quite sure which of all governments is the worst, and that is a monarchy without due power vested in the executive; anything is better than that.' 'So say I,' added Lord Brougham, 'of an impotent ministry; give me any ministry rather than that.'[h]

'Our constitution brings the whole conduct of the government under the virtual control of the House of Commons; unless therefore ministers, as its leaders, are enabled to exercise in that chamber an authority that cannot easily be shaken, and to command a majority on all ordinary occasions, it is obvious that the policy of the government must fall under the direction of a fluctuating majority of the House; and their measures will necessarily be ruled by popular passion and feeling, instead of by reason and prudence.' For the requirements of government continually demand the aid of legislation; whether for the grant of money, or for the amelioration of existing institutions. A strong government, enjoying the confidence of Parliament, is able to rely upon its concurrence in all acts which may be deemed advisable for the public good. But if those who have been entrusted with the administration of public affairs are unable to control the legislation of Parliament, so as to bring it into unison with their own policy, good and stable government will be impossible. In such a case, 'the law-makers and tax-imposers are sure to quarrel with the tax requirers.' The executive is crippled by not getting the laws it needs, or the money it wants; and becomes unfit for its name, since it cannot execute what it may decide upon: while the legislature becomes demoralised, by attempting to assume

Evils resulting from a weak ministry.

[g] Grey's Parl. Govt. pp. 99-104, 220-226, 232.
[h] Hans. D. v. 101, p. 814.

the reins of government without being itself responsible for the consequences of its own acts, and by venturing to intrude upon matters which are beyond its province to determine.[i] But where the balance of power between the component parts of the supreme authority is duly preserved, these evils will have no existence. Parliament, on the one hand, will be able to fulfil its proper function, of exercising a vigilant control over every act of administration, and being prompt to interpose upon every occasion of abuse or misgovernment; and, on the other hand, the responsible servants of the crown, while always dependent upon an enlightened public opinion for the approval of their conduct, and subject to dismissal if they fail to secure the confidence of Parliament in their general policy, will nevertheless, so long as they retain that confidence, be in possession of 'sufficient power to act according to their own deliberate judgment, instead of being compelled to follow the shifting currents of the popular will.'[j]

Benefits of a stable administration.

This has been the practical working of parliamentary government in England, at least until the present day, when we are beginning to experience the injurious effects of weak administrations. A result so excellent, however, has not been attained without considerable alloy. In the gradual development of the constitution, the separate rights of other estates of the realm, which have become absorbed into the House of Commons, have only been preserved by means of anomalous and corrupt practices and departures from principle in our representative system, which no one would willingly see perpetuated.[k] It is to be hoped that the wisdom of Parliament may be able to devise some method of preserving the just weight and influence

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[i] See Bagehot on the Eng. Const. pp. 20, 172. For examples of the increasing weakness of the executive in the H. of Com. see Hans. D. v. 182, pp. 158, 2108.

[j] Grey, Parl. Govt. pp. 236, 238.

[k] See Park's Dogmas, p. 59.

of the crown in a reformed legislature which would be free from objection in principle, and whereby the full benefits of an equitable parliamentary government could be secured with the sanction and authority of law.

Ministers in the House of Commons.

Under the altered circumstances herein contemplated, it is probable that as a general rule the sovereign would select her leading ministers in the House of Commons either from the life members, or from amongst the members chosen by the House at the commencement of every Parliament. This would be very preferable to the plan that has been suggested by some writers, of authorising ministers, who are required by the public service to have seats in the House of Commons, to sit in that assembly by virtue of their offices.[1] Such an arrangement, however convenient, would be a great innovation upon the acknowledged principles of the constitution, and might occasion very serious consequences. By ceasing to combine the character of member of Parliament with that of servant of the crown, and holding their seats in the latter capacity only, much misapprehension as to the true position of ministers would naturally be engendered. It might appear as though the crown, whom alone they professed to represent, was a power apart from, if not antagonistic to the legislature. The prevalence of any such idea would materially jeopardise the harmonious action of the three branches of Parliament.[m]

Ought not to sit *ex-officio*.

It now only remains to point out the position occupied by the Houses of Lords and Commons respectively in the English political system.

Influence of county families.

The Revolution of 1688 placed the control of the government of England in the hands of the great county families; and from that period until 1832 the

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[1] See Greg's Pol. Essays, v. 2, p. 582.

[m] See Austin's Plea for the Const. p. 28, *n*; also the opinions of the first Earl Grey and of Ld. Althorp to the same effect, Hans. D. v. 147, p. 903; and Bagehot, Eng. Const. p. 224.

power of the peerage was immense. But that Revolution was mainly aristocratic. From the time of the Revolution to the reign of George III., the Whig party almost always preponderated in the House of Lords, and included the families of the greatest influence and dignity. Liberal tendencies, in fact, have always been a distinguishing mark of the English nobility from the days of King John, when they obtained Magna Charta for the people; and their interests, as a class, have ever since been indissolubly interwoven with those of the people.[n] Nevertheless, the House of Lords, as a part of the nation, owing their position to their individual territorial possessions, and to the stable principle of hereditary descent, continues to exercise important political functions, which the independence and security of their position peculiarly qualify them to discharge. They embody, in a practical form, the Conservative element as an important and necessary counterpoise to the progressive element, which is the distinctive quality of the House of Commons.[o] This power was exercised, however, not so much in their own Chamber as indirectly towards the sovereign, and over the county and borough elections. Their influence at court, and their authority as landed proprietors in the constituencies, generally made them virtually supreme over every successive administration. Consequently, the fate of a cabinet was virtually determined by the relative strength of the rival factions into which the leading families were divided. But the Reform Bill of 1832 deprived them of the greater portion of this power, and transferred it to the middle class. The landed interest is still, indeed, very influential in the House of Commons, but it is no longer dominant, as heretofore. The commercial and manufacturing interests, which have

Liberal tendencies of nobility.

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[n] W. E. H. Lecky, in N. Am. Rev. v. 126, p. 62.

[o] See a paper by Bonamy Price in Con. Rev. v. 38, p. 942.

attained to such enormous magnitude within the present century, now possess a great and increasing share of political power.

Administrative capacity of the peers.

It has been said that 'the power of the peerage is greater in every part of England than in their own House.'[p] 'Its members hold innumerable elective offices of more or less importance, conferred upon them because the community at large, when it exercises its own unbiassed discretion, rightly or wrongly prefers peers and men of large landed estate to all competitors of pretensions otherwise equal.'[q] Thus our aristocracy have shewn a special capacity for administration as governors of colonies and as viceroys of India and of Ireland. And at home they naturally take the lead in the management of local affairs. In Parliament, however, the Lords have always reflected, with more or less distinctness, the prevailing characteristics of the age in which they lived. In addition to their legitimate weight and influence as representing the great bulk of the landed property of the kingdom, they have generally been conspicuous for the amount of legal ability, political knowledge, and administrative experience to be found amongst them. Moreover, as a class, they are eminently distinguished for their high personal qualities. For cultivation, refinement, moral worth, active and intelligent interest in the welfare of those dependent upon them, and for general sympathy in the progress of the whole community, the aristocracy of England will favourably compare with that of every other nation in Christendom.[r] As an independent branch of the legislature, they are therefore entitled to exercise a very substantial power, which should serve as a posi-

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[p] Mr. Disraeli, Hans. D. v. 185, p. 232; Mr. Gladstone, 19th Cen. v. 2, p. 547.

[q] See Sat. Rev. Oct. 7, 1871, p. 453; also, Ld. Houghton's paper, on the House of Lords, in Fort. Rev. v. 11, p. 4.

[r] See Hans. D. v. 143, p. 609; v. 159, p. 1571; also *Ib.* v. 162, p. 2137; and Lord Carnarvon's speech, *Ib.* v. 196, p. 1179.

tive check upon the Lower House when it may have been induced to act with unwise precipitation.[s]

Modified relations between both Chambers.

But the growing political importance of the House of Commons, since the establishment of parliamentary government, has materially modified the relations between the two Chambers, and lessened the authority which theoretically appertains to the House of Lords as a co-ordinate and co-equal branch of the imperial legislature. Though equally free with the Commons to express their opinion upon all acts of administration, and their approval or otherwise of the general conduct or policy of the cabinet, they are unable, by their vote, to support or overthrow a ministry against the will of the Lower House. 'To place upon the House of Lords the weight and responsibility of controlling the executive government of this country, would soon put that House in a position which they have never hitherto occupied, and which they could not safely maintain.'[t] Nevertheless, the censure of the policy of a government by the House of Lords is 'a matter of very great importance,' and can only be counterbalanced by the formal approval of the same policy by the House of Commons.[u] It is true that the Grey ministry resigned, in 1832, in consequence of the rejection of the Reform Bill by the House of Lords; but this was an instance of parliamentary obstruction to a measure of vital importance, which the administration had pledged themselves to carry through the legislature. After an ineffectual attempt to form a new ministry, the former cabinet was

[s] See Grey, Parl. Govt. p. 64; and Corresp. Will. IV. with Earl Grey, v. 2, pp. 98, 100, 118.

[t] Lord John Russell, in Hans. D. v. 142, p. 105.

[u] Ld. John Russell in Hans. D. v. 112, p. 105; Earl Derby, *Ib.* v. 206, p. 1856; May, Const. Hist. v. 1, p. 467. See precedents: Mir. Parl. 1833, pp. 2062, 2104, 2114, 2121; 1839, pp. 1705, 1737, 1963; Hans. D. (Lords) August 24, 1841; Hans. D. v. 112, pp. 105, 694, 721; censure of foreign policy of ministers by the Lords, on July 8, 1864; a similar vote of censure proposed in the Commons on July 4, negatived July 8, 1864.

reinstated in office, and succeeded in obtaining the consent of the Lords to their measure of reform.[v]

The Lords free from sectional interest.

In one important particular the House of Lords differs, and has always differed, from the House of Commons. The representation of sectional interests has never found a place therein. 'It has never had a railway interest, or a public-house interest, or an interest adverse to the reformation of law, or indeed any of that importunate advocacy which disturbs the due course of political action, and perverts the instrument of legislation to private and particular advantage. On the contrary, it has acted as a sharp corrective to some of the risks which the public good runs when parliamentary measures are manipulated by the representatives of sectional interests.'[w] Moreover, the members of the House of Lords, from their independent position as hereditary legislators, are comparatively free from the bondage of party influences—an inestimable advantage in lessening the evils unavoidably connected with party government in our political system.

The Lords seldom initiate legislation.

In the fulfilment of their legislative functions, the Lords, from the commencement of the present century, have been becoming less and less a House for the initiation of great public measures. Bills which concern the improvement of the law, and certain private Bills of a semi-judicial character, appropriately commence with the Lords; and in 1859 an arrangement was made whereby a fair proportion of ordinary private Bills should be first introduced in the Upper House, with a view to facilitate the despatch of private business.[x] But as a general rule, the Commons are not disposed to receive very favourably Bills which do not originate with themselves; and every Ministry has felt the

[v] See *post*, p. 190.

[w] Thorold Rogers, Coll. of Lords' Protests. v. 1, p. 27. But there are about forty-six members of the House of Lords, who are Chairmen or Directors in Railway Companies. Fin. Reform Al. 1876, p. 129.

[x] May, Parl. Prac. ed. 1883, p. 759; Com. Jour. Feb. 7, 1859.

advantage of having the support of the House of Commons in bringing a measure before the Lords.[y] The province of the House of Lords appears more properly to be that of controlling, revising, and amending the projects of legislation which emanate from the House of Commons.[z] 'To balance and regulate the political movement of the nation; . . . to test, by temporary resistance, the sincerity and strength of the will which demands a change; to make legislation take its stand on the good sense and ultimate judgment instead of the momentary desire of the country; and to give continuity and stability to the general policy of the nation.'[a] In the discharge of this onerous and important duty the House of Lords within the present generation have asserted their independence, and vindicated their responsible position as a branch of the legislature upon several notable occasions. Witness their successful defence, in 1835, of the revenues of the Irish Church, their valuable amendments to the Municipal Corporations Bill, their protracted resistance to the introduction of Jews into Parliament, their vigorous opposition to the repeal of the Paper Duty,[b] their steadfast maintenance of the principle of Church Rates, and their refusal to concur in legalizing marriage with a deceased wife's sister. A second Chamber, independent, active, vigilant, and powerful, is, indeed, of vital necessity to a well-regulated state.[c] And it is generally

Important services of the House of Lords.

[y] Duke of Argyll, Hans. D. v. 198, p. 1175.

[z] See Lords' Debates in Hans. v. 119, pp. 246, 317; *Ib.* v. 98, p. 335; v. 159, p. 2130; v. 161, p. 182; v. 203, p. 234. And see Bagehot, Eng. Const. pp. 130, 135.

[a] Bonamy Price, Cont. Rev. v. 38, p. 947.

[b] See May, Const. Hist. v. 1, p. 264; Hearn, Govt. of Eng. p. 167; Hans. D. v. 197, p. 67; v. 208, p. 1873.

[c] The arguments in favour of two legislative Chambers will be found in Creasy's Eng. Const. p. 198; Mill, Rep. Govt. c. xiii.; Baron Stockmar's Memoirs, v. 2, c. xxviii.; W. E. H. Lecky, in N. Am. Rev. v. 126, p. 71; in Hearn, Govt. of Eng. pp. 540-545; Helps, Thoughts on Govt. c. iv.; Fort. Rev. v. 20, N.S. p. 46. See also the debates in Parliament on the Australian Government Bill, in 1850; and in the House of Commons on the New Zealand Constitution, June 4, 1852; and on the S. Africa Confed^{n}. Bill, April 23, 1877.

conceded by the best political writers, that whatever may be the theoretical objections to the constitution of the House of Lords, it has fulfilled the functions which belong to an Upper Chamber of the legislature with signal and singular success.[d] In fact, 'as a legislative body, the Lords have great facilities for estimating the direction and strength of public opinion. Nearly every measure has been fully discussed before they are called upon to consider it. Hence they are enabled to judge, at leisure, of its merits, its defects, and its popularity. If the people are indifferent to its merits, they can safely reject it altogether; if too popular, in principle, to be so dealt with, they may qualify, and perhaps neutralise it, by amendments, without any shock to public feeling. At the same time, they are able, by their debates, to exercise an extensive influence upon the convictions of the people. Sitting like a court of review upon measures originating in the Lower House, they can select from the whole armoury of debate and public discussion the best arguments, and the most effective appeals, to enlightened minds.'[e]

The Lords' ability to estimate public opinion.

Advantages of a Second Chamber.

In 1871, Mr. Henry Fawcett, M.P., argued in favour of a Second Chamber as a counterpoise to democratic ascendency in a House of Commons chosen, as at present, on the majority principle, and, until it should be 'elected on a plan that would make it a truly national assembly, in which every class and section of opinion would be fairly and proportionately represented.'[f]

Mr. Freeman is in favour of a Second Chamber as checking the acts of the popular assembly; but, in a Federal State, he considers it indispensable for another reason—viz. that it represents the several States in their separate character.[g]

The result of experience in the several States of the American Union,—and the value of a Second Chamber, to represent a different

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For the argument in favour of a single Chamber, see Mr. Kinnear's paper in Fort. Rev. Sept. 1869; Mr. Leach's paper, *Ib.* Sept. 1882; and for advantages of the same in the small West India Islands, see Hans. D. v 206. p. 1023.

[d] Grey, Parl. Govt. p. 64.

[e] May, Const. Hist. v. 1, p. 266. And see Trevelyan's Life of Macaulay, v. 2, p. 55.

[f] Fort. Rev. N.S. v. 10, p. 503.

[g] Int. Rev v. 3, pp. 724-741.

constituency, and to express, by its longer term of existence, the sober second thought of the people, in contradistinction to the impulsive first thought of the lower House,—is ably shown in the American 'Law Review.'[h]

Should not give persistent opposition to the Commons.

It may be regarded, however, as a settled principle of modern parliamentary government that it is not the duty of the House of Lords to continue a persistent opposition to measures that have been repeatedly passed by the House of Commons with large and increasing majorities; especially when public opinion out of doors has been unmistakeably expressed to the same effect.[i] Such a course would inevitably lead to an infringement of the constitutional independence of the Upper House, by the creation of additional Peers to facilitate the passing of the particular measure. But this is an extreme proceeding, which could not be approved under any circumstances; although the right of the crown in the exercise of this prerogative can only be restrained by considerations of public policy.[j]

Culpable indifference of the Peers to their legislative duties.

A serious defect has been noted in the conduct of the great majority of the hereditary Peers of England, and one which has seriously impaired, if not endangered, their political influence, namely, their indifference to the discharge of their parliamentary duties. The House of Lords consists of about four hundred and fifty Peers available for legislative service; of these not above two hundred take any part therein. The quorum of the House is but three,[k] a number palpably inadequate for a numerous deliberative assembly, and the average attendance of Peers contrasts unfavourably

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[h] Am. L. Rev. Oct. 1869, pp. 18-30.

[i] See the D. of Wellington's letter on his management of the House of Lords, from 1830 to 1846, in Brialmont's Life, v. 4, p. 140; Lord Stanley (Earl of Derby) on Free Trade, Hans. D. v. 86, p. 1175; Earls Grey and Lyndhurst on the Jewish Oaths Bill, *Ib.* v. 149, pp. 1481, 1771; and see Mr. Horsman's speech, *Ib.* v. 159, p. 1573; Earl Granville, *Ib.* v. 196, p. 1656.

[j] On this subject, see May, Const. Hist. v. 1, p. 202; and Hearn's remarks, in his Govt. of Eng. pp. 168-175.

[k] Hans. D. v. 74, p. 1016.

with that of the other Chamber.[l] But with a large proportion of members who are fitted by natural gifts, high cultivation, and political experience acquired in other fields of labour for a parliamentary career, there is no reason why the House of Lords, if sufficiently alive to their responsibilities, should not possess and permanently retain the confidence of the nation, as an essential part of the legislature, and a main safeguard of constitutional liberty.[m] By a new Standing Order, adopted on April 2, 1868, an attempt has been made to obtain a fuller attendance of members for service on Select Committees.[n]

Reasons why the Lords should retain confidence of the nation.

Since 1874, as a matter of fact, an unusually large number of important measures have originated in the House of Lords: for example, the Public Worship Bill, in 1874; the Judicature Act, in 1875; the Oxford University Reform Bill, in 1876. And it is questionable whether the influence of the House upon legislation and upon parliamentary opinion is not increasing rather than diminishing at the present time, notwithstanding the rapid growth of the democratic spirit.[o]

Origination of measures in the Lords.

But in this progressive age it is evident that some modification in the constitution of the House of Lords is called for to enable it to retain its hold upon the national sympathies. At present, the House of Lords stands alone in Europe as a Second Chamber founded wholly upon the hereditary principle; and it is in this

Reform of the Lords necessary.

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[l] See May, Const. Hist. v. 1, p. 206; Hans. D. v. 180, p. 1034; Ld. Houghton, in Fort. Rev. Jan. 1872. With the House of Com. within the past few years, there is an increasing disposition to attend more regularly than formerly; which is attributable, in a great degree, to the higher standard of duty which is enforced by the constituent body. Rep. Com[e]. on H. of Com. arrangements, 1867, Evid. 264; Hans. D. v. 195, pp. 259, 457. But see *Ib.* p. 303.

[m] See Hans. D. v. 188, p. 129. In fact during the late Parliament (1874-79) the hereditary Chamber has certainly not diminished in importance, or in popular estimation, and an unusually large number of public measures have originated therein. See Fras. Mag. v. 15, N.S. p. 173.

[n] Hans. D. v. 191, p. 604.

[o] See Escott, on England, its People and Polity (in 1879), v. 2, c. xxiii.

direction that some alteration in its constitution, with a view to bring this august body into greater harmony with modern political ideas, may be anticipated.[p]

Though the representative peers for Scotland and Ireland are elected from amongst their own order, their qualification is based on the hereditary principle. The same is true in regard to the archbishops and bishops, who individually occupy a position which may be termed, in a general sense, the inherited privilege of the occupant of the See for the time being. The only positive exceptions to this principle are the two law lords, who were made ex-officio peers for life in 1876, under the authority of the Appellate Jurisdiction Act, 1876, sec. 6.

Opinions for and against reform of the Lords.

On the other hand, Mr. T. E. Kebbel, in the 'Fortnightly Review' for May, 1882, has no faith in a reformed House of Lords, but points out, with great force, its truly representative character and its value to the nation. Its total abolition is advocated by Mr. A. F. Leach, in the same journal for September, 1882. And in the 'Review' for February, 1883, the learned historian, Mr. E. A. Freeman, points out the remarkable changes undergone by the House of Lords, in successive generations, within the last six hundred years, which afford 'a strong presumption in favour' of further change whereinsoever it may be needed.[q]

Position of the House of Commons.

But ever since the days of Walpole, the House of Commons have been steadily gaining political ascendency. Nominally co-equal with the crown and the Lords, as a constituent part of the legislature, they have gradually attained to a position which enables them to compel the adoption, sooner or later, of any policy, or any legislative measure, upon which they are agreed. Witness the Roman Catholic Emancipation Act, which was carried against the deliberate will of

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[p] See Sir D. Wedderburn. on 'Second Chambers' in 19th Cen. v. 10, p. 56; the Marquis of Blandford, on 'Hereditary Rulers,' *Ib.* p. 217; Fras. Mag. v. 24, N.S. p. 401; Mr. Rathbone, M.P., on Reform in the House of Lords, in the Fort. Rev. v. 30, N.S. p. 399.

[q] See Goldwin Smith, N. Am. Rev. v. 108, pp. 241-246.

George IV., the Reform Act, the repeal of the Corn Laws, and the Jewish Oaths Bill, against the deliberate will of the House of Lords. These, and other important acts of legislation, though disapproved of either by the crown or by the Peers, were nevertheless acquiesced in by them, to avert more serious consequences. Again, it devolves upon the House of Commons practically to determine in whose hands the government of the country shall be placed. By giving their confidence to one party and by refusing it to another, by extending it to certain men and refusing it to certain other men, they plainly intimate to the sovereign the statesmen who should be selected to conduct the administration of public affairs, and to advise the crown in the exercise of its high prerogatives.[r] In 1835, William IV. was compelled to accept the resignation of Sir Robert Peel, who, at the earnest solicitation of the king, had attempted to carry on the government, and to recall to his councils the Melbourne administration, which he had previously summarily dismissed, on account of the inability of Sir Robert Peel to obtain the confidence of the House of Commons.

They decide the fate of ministers.

The Lords do not decide the fate of ministries

In deciding the fate of a ministry, the House of Lords, we have already seen,[s] are practically powerless; 'only for fifteen years out of the last fifty has the ministry of the day possessed the confidence of the House of Lords.'[t] The Grey Ministry (in 1830—1834), which was remarkably strong both at home and abroad, was throughout opposed in the Lords by a decided and constantly increasing majority. On the other hand, the Derby administrations, in 1852 and 1858, though approved and sustained in the Upper House, were speedily broken up because they could not command a majority in the Commons. And the Palmerston ministry in 1864, when their foreign policy was censured by the House of Lords,

[r] Russell, Eng. Const. p. xlviii.
[s] *Ante*, p. 37.
[t] Mr. Gladstone's Gleanings of Past Years, v. 1, p. 236.

were able to set at nought this hostile vote, in consequence of obtaining a small majority, upon a similar question, in the Lower House.[n] These examples are sufficient to prove the great and preponderating authority of the House of Commons. That this authority has not been abused, is due to the spirit of moderation which has generally pervaded the councils of that assembly, and also to the legitimate influence of the crown and of the hereditary aristocracy, which, happily for the equilibrium of the constitution, still finds expression within its walls.

These preliminary observations upon the system of parliamentary government in England will, it is hoped, afford some idea of its true character, and serve to explain the chief points of contrast between our present political institutions and those which were in operation prior to the Revolution of 1688.

Parliamentary government.

It must be evident to the student of history, that parliamentary government is no modern political device to substitute the supremacy of Parliament for that of the crown, but that it owes its origin to the growth of foundation principles in the English constitution; and that the transition, from the ancient method of government by prerogative to that which now prevails, has been a gradual and legitimate development. Whether the modern system is, in every respect, the most perfect or the best adapted to the wants and wishes of the nation, it is not the object of the present writer to inquire. He is not concerned with the special advocacy of any particular form of government; his aim has been simply to describe the actual working of representative institutions in England as they now exist. He has not refrained from noticing, as opportunity offered, the peculiar defects of parliamentary government, and the dangers to which he conceives that system to be ex-

[n] See Mr. Lowe's speech, Hans. D. v. 244, p. 208.

posed. On the other hand, he is bound in fairness to point out its peculiar merits and advantages, which have contributed to make it popular at home, and a model for imitation in many foreign countries. These advantages have been admirably stated by Rowlands, in his work on the English Constitution, in the following terms :—

Its peculiar advantages.

The value [of parliamentary government] in bringing the monarchy into unison with the freedom demanded and obtained by the other institutions of the government and by the people, cannot be too highly estimated. It has changed the vague, precarious, and irresponsible authority of the ancient monarchs for an executive council, nominated by the monarch from the peers and representatives of the people, but acting under the direct influence of the House of Commons, and accountable there for all its proceedings. It has relieved the king from the burden, and from the moral as well as actual responsibility, of directing or conducting the state affairs ; and whilst he retains his high position as chief of the state, and the power of impressing his views of government on his ministers when in office, and of selecting new ministers when a change is required, he is not involved in the fluctuating fortunes of the rival statesmen who from time to time become his servants as ministers of the crown. With respect to the people, it has opened the road to the highest offices of the state to the ambition of all who can raise themselves to distinction in the House of Commons ; and thus it places political power of the highest order in the most eminent and distinguished of the people themselves.[v]

Advantages of constitutional government over other forms.

To this it should be added, that in times of difficulty a parliamentary constitution possesses additional advantages over every other form of government. If the statesman at the helm should prove deficient in vigour or sagacity, upon emergencies arising that were not contemplated when he was originally placed in office, he can be promptly removed, and replaced by one more fitted for the occasion ; and this can be effected, through the interposition of Parliament, without the necessity for resorting to any extreme measures, and without

[v] Rowland's Eng. Const. p. 438. See further, as to the advantages of parliamentary government over the system which it superseded, Grey, Parl. Govt. p. 344.

disturbing the ordinary course of public affairs. On the other hand, if the majority in Parliament should become advocates of extreme opinions—which the nation is not prepared to sustain—the remedy is equally efficacious. By an appeal to the constituent body—as in 1784, in 1831, and in 1874—political supremacy will be promptly transferred to other men, whose policy the nation has approved.

Thus, upon the sudden crisis of the Crimean War, and as the result of parliamentary interposition, the respectable but too pacific premier, Lord Aberdeen, was compelled to give place to Lord Palmerston, in whom the nation had confidence as a vigorous war minister. It was said of the House of Commons, on this occasion, that they had 'turned out the Quaker, and put in the pugilist.' [w]

Subjects embraced in this treatise.

As a suitable introduction to the more practical part of this treatise, it is proposed, in the following chapters, to give a brief outline of the leading events in the annals of England which tend to elucidate the origin and progress of our present political institutions; together with a summary of the constitutional history of the successive administrations of England from 1782 to our own day.

We shall next consider the precise position of the sovereign in relation to parliamentary government. The leading prerogatives of the crown will be then separately reviewed, and the limits of the control which may be rightfully exercised by the two Houses of Parliament over the administration of the same, by responsible servants of the crown, will be explained and illustrated. The position of the privy council under parliamentary government, the origin, history, and duties of the cabinet council, and the political functions of the several members who compose the administration, will next engage our attention. Finally, the duties which devolve upon members of the govern-

[w] Bagehot, Eng. Const. p. 33.

ment, in the conduct of public business in Parliament, will be briefly described.

In treating upon the various and important questions contained in this work, regard will be had to the recorded opinions of eminent statesmen who have spent their lives in the practical exposition of our parliamentary system; and numerous precedents will be adduced, at every stage of the enquiry, not merely to corroborate the doctrine advanced in the text, but to illustrate the manner in which the principles and practices of parliamentary government have been gradually developed, and become incorporated as recognised parts of the British constitution.

CHAPTER II.

THE COUNCILS OF THE CROWN, UNDER PREROGATIVE GOVERNMENT.

Origin of our national polity.

THE origin of the political institutions of modern England must be sought for in the governmental system of our Anglo-Saxon progenitors. Meagre and imperfect as is our information on this subject, enough is known of the leading principles of Anglo-Saxon government to show that in them were to be found the rudiments of the institutions which we now enjoy.

The precise features of the polity of England before the Norman Conquest, although they have given rise to much learned enquiry, are still, to a considerable extent, conjectural. But the researches of Sir Francis Palgrave[a] and of Mr. Kemble,[b] supplemented and corrected by the more recent investigations of Mr. E. A. Freeman[c] and Professor Stubbs,[d] have been of inestimable service in elucidating much that was previously obscure in this branch of historical enquiry. The student of political history will find in their works ample materials to aid him in forming an intelligent idea of the fundamental laws and established institutions of this country in the earliest days of our national life. And these writers are all agreed in testifying that, however striking may be the contrast, in many points of detail, between the

[a] Rise and Progress of the Eng. Commonwealth, 2 vols 4to. 1832.

[b] The Saxons in England; a History of the Eng. Commonwealth till the period of the Norm. Conq. 2 vols. 8vo. 1849.

[c] History of the Norm. Conq. v. 1. Preliminary History to the Election of Edward the Confessor (1867).

[d] Const. Hist. of Eng. (1874).

Anglo-Saxon government.

primitive form of government in the time of our Anglo-Saxon forefathers and that which now prevails, 'the germs alike of the monarchic, the aristocratic, and the democratic branches of our constitution will be found as far back as history or tradition throws any light on the institutions of our race.'[e]

In common with other tribes of similar Teutonic origin, the Saxons in England, from a very early period, were ruled over by kings, whose power was not arbitrary and despotic, but was subjected to certain well-defined limitations, by the supreme controlling authority of the law.

The king.

The dignity, authority, and power of the chief ruler in England were gradually developed from that of an ealdorman (who combined in his own person the functions of a civil ruler and of a military chieftain) into that of a king—a change that is not peculiar to our own land, but which marked the progress of political society elsewhere, in countries inhabited by the Teutons and other kindred peoples. The transition from ealdorman to king brought with it an accession of power to the ruler. As the territory over which his headship was recognised expanded, his royal dignity and importance increased.[f]

The early Teutonic constitution, when transplanted into English soil, was, like that of many of the small states of the Old World, essentially free. It consisted of a supreme leader, with or without royal title, an aristocratic council composed of men of noble birth, and a general assembly of freemen, in whom the ultimate sovereignty resided.[g] By degrees, however, the primitive democracy of the ancient Teutonic communities gave place to the rising influence of the *comitatus*, or personal following of the chiefs. And in proportion as the kings of England advanced in strength and

The nobles.

[e] Freeman, v. 1, p. 75.
[f] *Ib.* pp. 76-81. Stubbs, c. vii.
[g] Freeman, v. 1, pp. 86-90.

dominion they naturally acquired a more complete supremacy over their comitatus. The thanes, or body-servants of the king, were gradually invested with rank and power in the kingdom. Thus there arose a new kind of nobility, *virtute officii*, which at length obtained precedence over the elder hereditary nobles.[h]

Other elements combined to magnify the authority of the chief ruler: such as the growth of feudalism—under which lands were held by the tenure of military service due from the vassal to his lord—and the control assumed by the king over the lands of the nation. At first the 'folkland' could only be alienated by the king, with the consent of his Witan. But after the Norman Conquest, the folkland was called the *terra regis*, or king's land, when the king claimed the right of granting it at his own pleasure, and without the sanction of Parliament.[i]

The Witenagemot.

But the power of the crown was, from the first, subjected to the control of the Witenagemot, or 'Meeting of the Wise Men,' which appears to have formed part of the national polity of the Teutons, from their earliest appearance in history, and was introduced by them into the Saxon commonwealth.[j] Originally a democratic assembly, Freeman describes the process by which this popular council, without the formal exclusion of any class of its members, gradually assumed an aristocratic aspect,[k] without losing any of its essential powers. Under the Heptarchy, every separate king in England had his own Witenagemot; but after the other kingdoms were merged into that of Wessex, their respective Witans became entitled to seats in the Gémot of Wessex, as being the common Gémot of the realm.

The Witans.

Our knowledge as to the constitution of these great councils, in any English kingdom, is extremely vague

[h] Freeman, pp. 91-97.
[i] *Ib.* pp. 97-102.
[j] Kemble, v. 2, pp. 185-195.
[k] Freeman, v. 1, pp. 106-110. And see his Paper on the origin of Parl. representation, in Int. Rev. v. 3, p. 728.

and scanty. But we have proof that the great officers of the court and of the kingdom were invariably present in the Witenagemot, together with ealdormen, bishops, abbots, and many other of the king's thanes. There was also an infusion of the popular element, by the attendance of certain classes of freemen, though to what extent and in what manner this took place cannot be positively determined.[1]

In the First Report of the Lords' Committee appointed to search the Journals of the House of Lords, Rolls of Parliament, &c., will be found all matters touching the Dignity of a Peer of the Realm (p. 17). Learned and elaborate reports were presented to the House by this Committee in the years 1819 to 1825, which were reprinted in 1829. The First Report, from which alone our citations are made, treats of the constitution of the legislative assemblies of England, from the Conquest to the legislative unions with Scotland and Ireland.[m]

But, howsoever composed, it is undoubtedly true that the Witenagemot was an institution which afforded to the English nation a remarkable amount of liberty and protection.

The powers of the Witenagemot have been defined, by Kemble, as follows:—'1. First, and in general, they possessed a consultative voice, and right to consider every public act which could be authorised by the king. 2. They deliberated upon the making of new laws which were to be added to the existing folcriht, and which were then promulgated by their own and the king's authority. 3. They had the power of making alliances and treaties of peace, and of settling their terms. 4. They had the power (subject to the restriction hereinafter mentioned) of electing their king. 5. They had the power to depose the king, if his government was not conducted for the benefit of the people. 6. They had the power, conjointly with the king, of

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[1] Kemble, v. 2, p. 237. Stubbs, c. vi.

[m] Lords' Pap., 1829, v. 10.

appointing prelates to vacant sees. 7. They had power to regulate ecclesiastical matters, appoint fasts and festivals, and decide upon the levy and expenditure of ecclesiastical revenue. 8. The king and his Witan had power to levy taxes for the public service. 9. The king and his Witan had power to raise land and sea forces, when occasion demanded. 10. The Witan had power to recommend, assent to, and guarantee grants of land, and to permit the conversion of folcland into bócland, and *vice versâ*. 11. They had power to adjudge the lands of offenders and intestates to be forfeit to the king. 12. Lastly, the Witan acted as a supreme court of justice, both in civil and criminal causes.'[n] All these instances of the powers exercised by the Witenagemot are illustrated, in Mr. Kemble's narrative, by numerous examples, taken from the records and chronicles of the period.

The kingly office.

In asserting that the king was elected by the Witan, and was subject to be deposed by their authority, it must not be inferred that the Anglo-Saxon state was, either in spirit or in form, an elective monarchy, in the modern acceptation of the term. In every Teutonic kingdom there was a royal family, out of which alone, under all ordinary circumstances, kings were chosen; but within that royal family the Witan of the land were privileged to exercise choice. The eldest son of the last king was considered as having a preferential right; but if he were too young, or were otherwise objectionable, some other and more capable member of the royal family would be chosen instead. Again, the recommendation of the king himself as to his successor on the throne had great weight, and was usually respected. On every occasion, indeed, the right to the kingly office must be substantiated and confirmed by a competent tribunal. But in so doing the members of

[n] Kemble, v. 2, pp. 204-232.

the great council 'are not national representatives, offering the empire to a candidate whom their voices have raised to authority; but they are the "Witan," the judges, whose wisdom is to satisfy the people that their allegiance is demanded by their lawful sovereign.' 'Though we cannot adopt the theory that the Anglo-Saxon empire was elective, we arrive, however, at the conclusion that it was governed by law. The Constitution required that the right of the sovereign should be sanctioned by a competent tribunal.' Thus, 'the inchoate title of the sovereign was confirmed by the national assent, and his claim was to be recognised by the legislature. In this sense,' says Sir Francis Palgrave, 'the king was said to be elected by the people.'[o]

In like manner, the extreme right of deposing their sovereign, which the law assigned to the Witan, was one that was obviously to be resorted to only in cases of emergency, when the conduct of the reigning monarch had made him intolerable to the people. The exercise of this power by the Witan was an event of very rare occurrence, but examples are to be found, both before and after the Norman Conquest, of the deposition of kings by Act of Parliament.[p]

Powers of the Witan.

From this it will be seen that the powers of the Witenagemot far exceeded those assigned by law to modern legislative bodies, or exercised, in conformity with constitutional practice, by the House of Commons at the present day. 'Every act of government of any importance was done, not by the king alone, but by the king and his Witan.' The Witan had a right to share, not merely in ordinary acts of legislation, but even in matters of prerogative and administration which are now considered as exclusively appertaining to the crown.[q] It might reasonably be anticipated that such

[o] Eng. Commonwealth, v. 1, pp. 558–562; Kemble, v. 2, p. 214; Freeman, v. 1, p. 117.

[p] Kemble, v. 2, p. 219; Stubbs, v. 1, p. 136.

[q] Freeman, v. 1, pp. 113, 120.

a polity would unavoidably give rise to frequent collisions between the king and his parliament, and such undoubtedly was the case after the Norman Conquest, when the power of the sovereign had assumed more formidable dimensions, at variance with the ancient principles of English liberty.[r] But the Saxon Witenagemot appears to have co-operated more harmoniously with the king than similar assemblies of a later date. This may be accounted for by the fact that 'it was not a body external to the king, but a body of which the king was the head in a much more direct sense than he could be said to be the head of a later mediæval Parliament. The king and his Witan acted together; the king could do nothing without the Witan, and the Witan could do nothing without the king; they were no external half hostile body, but his own council surrounding and advising him.[s] Under such circumstances, it is natural that this influential body should have been privileged to interpose, with authority, in the conduct of public affairs.

Royal authority.

The mutual interdependence between the sovereign and his council at this period of our history must not lead us to infer that a Saxon monarch was a mere instrument for carrying out the resolves of his councillors.

The king of England, in those days, was the acknowledged head of his people—the lord to whom all the nobles of the land owed fealty and service. He was the fountain of honour, and the dispenser of the national wealth. He appointed the time and place for meetings of the Witan, and laid before them whatever matters required their advice or consent, exercising over their deliberations the influence which properly belonged to his exalted station and personal character. If weak, vacillating, or unworthy, his powers would necessarily

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[r] Freeman, v. 1, p. 121 [s] *Ib.* p. 122.

be impaired, and it would be the province of the Witan to restrain him from acts of misgovernment, and to demand security for the due administration of the royal functions. Strictly limited by law in the exercise of his prerogatives, the personal authority of an ancient English sovereign, if at all worthy of his position, was wellnigh unbounded.[t]

After the triumph of the Norman arms, on October 16, 1066, at the battle of Hastings, the crown of England was transferred to William the Conqueror by a forced election of the English Witan.[u]

Election of the early kings.

The form of an election continued to be observed, as a general rule, until the accession of Edward I., when the principle prevailed, that immediately on the death of the king, the right of the crown is vested in his heir, who commences his reign from that moment.[v] Nevertheless, in the ceremonial observed at the coronation of the successive kings of England to that of Henry VIII. inclusive, there continued to be used forms wherein the recognition, will, and consent of the people are distinctly asked, and the kings were declared to be 'elect and chosen' by 'the three estates of the realm.'[w] But in the reign of Henry VIII., Parliament definitely determined the succession of the crown to be in Edward, Mary, and Elizabeth; and in default of issue from them, even empowered the king to bequeath the crown to whomsoever he would, provided only that his choice should be made known, 'as well to the lords spiritual and temporal, as to all other his loving and obedient subjects, to the intent that their assent and consent might appear to concur therein.'[x] Afterwards, Queen Elizabeth's title to the crown was formally recognised by Parliament.[y] And upon her decease, without issue, Parliament acknowledged that the English crown 'did, by inherent birthright and lawful and undoubted succession,' descend to James I., as 'the next and sole heir of the blood-royal of this realm.'[z] Upon the abdication of James II., Parliament conferred the crown upon William and Mary, and afterwards regulated the succession in the Protestant line of the descendants of James I.

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[t] Freeman, v. 1, pp. 123–126, 163; Kemble, v. 2, p. 232; Palgrave, v. 1, p. 657; Stubbs, v. 1, p. 141.

[u] Stubbs, v. 1, p. 257; Freeman, v. 1, p. 163.

[v] *Ib.* p. 340; Allen, Royal Prerog. pp. 44–47.

[w] Chapters on Coronations, Lon. 1838, pp. 99, 103.

[x] 25 Hen. VIII. c. 22; 28 Hen. VIII. c. 7; 35 Hen. VIII. c. 1.

[y] 1 Eliz. c. 3.

[z] 2 James I. c. 1.

[a] 1 W. & M. sess. 2, c. 2; 12 & 13 Will. III. c. 2. And see Freeman's Growth of Eng. Const. c. iii. And

During the reign of this sovereign, and of his immediate successors, the character of the monarchy underwent a gradual change, but far more through the spirit in which the government was administered than by any direct action of the legislature. For William I. claimed to be the lawful successor of the Saxon kings. Inheriting their rights, he professed to govern according to their laws.[b]

The power of the crown.

The laws known as those of Edward the Confessor were so-called because they were solemnly ratified by him, 'as the condition and price of his restoration to the throne of his ancestors.' They were chiefly those contained in the comprehensive statutes which Canute, king of all England, enacted at Winchester, by the advice of his Witan, in the years 1017 and 1033.[c]

But with the new dynasty there came in a new nobility devoted to their Norman lord, who gradually displaced the nobles of the land in offices of rule, and obtained possession of their estates. Thus the power of the crown steadily increased, and the authority of the national councils was proportionably impaired. 'The idea of a nation and its chief, of a king and his councillors, almost died away; the king became half despot, half mere feudal lord. England was never without national assemblies of some kind or other; but, from the Conquest in the eleventh century till the second burst of freedom in the thirteenth, they do not stand out in the same distinct and palpable shape in which they do both in earlier and later times.'[d] Nevertheless, the liberties of their Saxon forefathers were always fresh in the recollection of successive generations of Englishmen, until, by slow degrees and after many struggles, they succeeded in recovering them—not indeed in their original shape, but in a form better adapted for the altered condition of the commonwealth.

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the West. Rev. Jan. 1882, on the Coronation Oath, its history, &c.

[b] Freeman, v. 1, pp. 2, 4, 163.

[c] Palgrave, v. 1, p. 48.

[d] Freeman, v. 1, p. 122. And Stubbs, c. ix.

The Saxon polity.

The picture of the political constitution of England under her Saxon kings, which we have sketched from the pages of the learned writers who have elaborately investigated the subject, is replete with interest and instruction. In a primitive state of society, and amongst a simple, loyal-hearted people, such a form of government was admirably adapted to their wants. By it freedom was maintained, life and property protected, and the national welfare advanced. But it may be doubted whether a system suited for such a time would have stood the test of stormier days, or sufficed to give adequate protection to the king and to his councillors under less favourable circumstances. Difficult problems in the art of government require the experience of centuries to solve them aright. The proper relations between the sovereign and his immediate advisers, the position which both should occupy towards the national legislature, the true sphere and appropriate functions of Parliament, are all of them questions of the highest importance to the national welfare. And as we proceed with our narrative, we shall find every one of these questions arising, and obtaining, in their turn, a suitable solution. Unconsciously, and ofttimes without apparent sequence, the efforts of each succeeding generation have been overruled to bring about the final issue. The vigour with which at one period the authority of the crown has been asserted, and the wider influence and more independent action claimed for the councils of the crown at another, have both alike contributed to the formation of our present system. And, happily for England, each new development as it arose was a result of the law of growth, and not the effect of revolution, and is clearly traceable to constitutional principles which existed in the germ in the ancient Saxon polity.[e]

Norman polity.

The special characteristic of the Norman period was

[e] See Stubbs, v. 1, p. 637; Macaulay, Hist. of Eng. v. 1, p. 25.

the growth of a new administrative system, deriving its origin and strength from the royal power. The foundation of this system was accomplished in the reigns of William the Conqueror and his three successors—William II., Henry I., and Stephen.[f] During this epoch the kings of England were practically absolute. The Witenagemot still subsisted, under the title of the Great Council of the realm, but it rather resembled an assembly of courtiers, occasionally convened for state purposes, than an organised deliberative body, subordinate only in privilege and importance to the private and 'continual' council of the king.[g]

Advisers of the crown.

From the first introduction of royalty into Britain, the sovereign has always been surrounded by a select band of confidential counsellors, appointed by himself, to advise and assist him in the government of the realm.[h] It may be confidently asserted that there is no period of our history when the sovereign could, according to the law and constitution, act without advice in the public concerns of the kingdom.[i] 'That the institution of the Crown of England has always had a Privy Council inseparable from it, is a fact which ought never to be lost sight of. This council has always been bound to advise the crown in every branch and act of its executive conduct.'[j] And it is, in fact, the only council, combining in itself both deliberative and administrative functions, which is authoritatively recognised by the law and constitution of England. The number of members composing this council has varied at different periods, according to the king's will, 'but of ancient time there were twelve, or thereabouts.'[k]

At the era of the Norman Conquest there appears

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[f] Stubbs, c. xi.

[g] *Ib.*, v. 1, p. 356.

[h] Palgrave, v. 1, p. 325; v. 2, p. 348; Stubbs, v. 1, pp. 140, 343.

[i] Palgrave on the King's Council, p. 20; Kemble, v. 2, p. 188; Hearn, Gov. of Eng. p. 18; Courtenay, Life of Sir Wm. Temple, v. 2, p. 57.

[j] Smith, Parl. Remem. (1862), p. 3.

[k] Coke, Fourth Inst. p. 53.

A.D. 1066. The king's councils.

to have been three separate councils in existence: one, composed of nobles, who were assembled on special occasions by special writs, and who, together with the great officers and ministers of state, formed the *magnum concilium*; another, styled the *commune concilium*, or general parliament of the realm. These two councils were mainly identical in their general character and relations towards the sovereign. Their chief distinction seems to have been in the greater care shown in summoning the members of the *commune concilium*, to advise the king in more general matters, and especially when grants of money were required. The third council was known as the *concilium privatum assiduum ordinarium*, or, more frequently, the king's council. It comprised certain select persons of the nobility and great officers of state, specially summoned thereunto by the king's command, and sworn, and 'with whom the king usually adviseth in matters of state and government.' This council—or probably a committee of it, consisting of the judges, presided over by the king, or (in his absence) the chief justiciary—served also as the supreme court of justice, which, under the denomination of the *curia regis*, commonly assembled three times in every year, wherever the king held his court.[1] The king's 'ordinary' or 'continual' council was equivalent to that which was known in later times as the Privy Council; although, meanwhile, it differed widely in its organisation.

Ordinary council.

'It was by a distribution of its business to subordinate committees that the functions of the Privy Council, in all ages, were performed.'[m] The legal committee, above mentioned, afterwards developed into a separate 'council learned in the law,' of which the only remains left at the present day is in the titular distinction of Queen's Counsel, accorded to leading members of the legal profession,[n]

[1] Hale, Jurisdiction of House of Lords, pp. 5-9; First Lords' Report, pp. 20-23; Lords' Pap. 1829, v. 10; Stubbs, v. 1, p. 564.

[m] Macqueen, Prac. H. of Lords, pp. 673, 674.

[n] Hearn, Govt. of Eng. pp. 295-297.

while the functions of this body are now fulfilled by the Judicial Committee of the Privy Council.[o]

But, apart from the fact that one was temporary and occasional, and the other permanent, there seems at first to have been but little difference between this body and the other principal councils. Leading nobles were members of the 'continual' council, and at meetings of the great council they naturally occupied a prominent place, either as members or assistants of that august assembly.

Permanent Council. *Curia Regis*, or *Aula Regia.*

The permanent council under the early Norman kings consisted of the great officers of state—namely, the chancellor, the great justiciary, the lord treasurer, the lord steward, the chamberlain, the earl marshal, the constable,—and any other persons whom the king chose to appoint. It also included the archbishops of Canterbury and of York, who claimed the right to form part of every royal council, whether public or private. Besides these persons there were occasionally present the comptroller of the household, the chancellor of the exchequer, the judges, the king's serjeant, &c. This body was then known as the *curia regis*, otherwise styled the *aula regia*, or court of the king, and its powers were immense and undefinable. Its duty was to assist the king in the exercise of his royal prerogatives, and to give its sanction to acts done by him in virtue of those prerogatives—the members thereby making themselves responsible for the acts of the king.[p] Thus, it was the executive. It acted also as a court of law. It took part in acts of legislation. In fact, 'the king, who was at once the ruler and judge of the whole nation, exercised the powers which he possessed, either directly (and this he did to a greater extent than modern students are apt to suppose) or indirectly, through the instrumentality of his great officers.' For

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[o] See *post*, vol. 2.

[p] First Lords' Report, Lords' Pap. 1829, v. 10, p. 21; Stubbs, v. 1, pp. 387, 436.

in considering 'the interchange of advice between the king and his nobles' during this period, we must divest ourselves of modern notions of constitutional authority, and understand that, 'according to the ideas prevailing in the eleventh century, it was rather the king's privilege than his duty to receive counsel from the great men of his kingdom. Their recommendations were not, like the advice of modern parliaments or ministers, commands veiled under a polite name, but in the strictest sense counsel;'[q] nevertheless, there were certain things which the king was never able to accomplish by his mere prerogative. Thus, he could neither legislate, nor impose new taxes, without the consent of his Parliament. And he was bound to rule in accordance with the laws of the realm; and if he broke those laws, his agents or advisers were, from a very early period, in some shape or other, held accountable for his misdeeds to the national assembly.[r] Moreover, it was the right and duty of the king to demand and receive advice from his great council under all circumstances of difficulty; a safeguard which the nation always jealously maintained, even though the supreme will of the monarch should be afterwards enforced, in accordance with his acknowledged prerogative. Always remembering, however, that the king of England was never an absolute monarch, but was himself subject to the law. Bracton,
A.D. 1250. writing in the thirteenth century, says that it is 'the law by which he is made king, . . . so that if he were without a bridle, that is, the law, his great court ought to put a bridle upon him.[s] For though the king is our

[q] The Privy Council: the Arnold Prize Essay, 1860. By A. V. Dicey, B.A., pp. 3-6.—This able essay presents, in a popular form, the results of the researches of Sir Harris Nicolas, in his learned prefaces to the 'Proceedings and Ordinances of the Privy Council of England,' from 10 Rich. II. (1386) to 33 Henry VIII (1542). I have been much indebted to both these works for my sketch of the history of the Privy Council under prerogative government.

[r] Macaulay, Hist. of Eng. v. 1, pp. 29-32.

[s] Quoted by Forster, Debates on Grand Remonstrance, p. 28. And see *ante*, p. 261.

sovereign lord, he does not possess the sovereign authority of the commonwealth, which is vested, not in the king singly, but in the king, lords, and commons jointly.[t] To enable him to govern his people with wisdom and discretion, the king would summon to his councils 'the most considerable persons in England, the persons he most wanted to advise him, and the persons whose tempers he was most anxious to ascertain.'[u]

In process of time the character of the *aula regia* underwent considerable modification. Each individual officer of the court had his own particular duties assigned to him. All business brought before the court would naturally be referred by the king to the functionary specially charged with the same. Thus, the marshal or constable, assisted probably by other members of the court, attended to military matters; the chamberlain to financial concerns; the chancellor to questions affecting the royal grants. Hence arose, by degrees, the separate institution of *curia regis*, under Henry II.—as an offshoot from the larger body—into a distinct judicial tribunal, which is the original of the present Court of Queen's Bench,[v] and the subsequent development, at a later period, of other courts of law and equity.

A.D. 1199.

Law-courts.

The first establishment of the law-courts, as distinct tribunals, took place, however, in the reign of King John. But it is worthy of notice that, notwithstanding the formation of separate courts for the administration of justice, the king's council continued to exercise judicial authority. To be the source and dispenser of justice, and to supply the defects and moderate the judgments of inferior courts, is an ancient prerogative of the crown.[w] This prerogative was ordinarily exercised through

[t] Allen, Royal Prerogative, p. 150; First Lords' Report, Lords' Pap. 1820, v. 10, p. 22.

[u] Bagehot, Eng. Const. p. 304.

[v] Chron. of Reigns of Hen. II. and Richard I. edited by Stubbs, v. 2, pp. 71–80; and see Stubbs, Const. Hist. v. 1, p. 465.

[w] See Palgrave, Eng. Commonwealth, v. 1, p. 283.

judges, in accordance with established precedent; but it was still regarded as within the power of the king to try suits, either by his own authority, or through the officers of his council.[x]

A.D. 1272. With the accession of Edward I. still more important changes commenced. The contemporaries of the Conqueror and his immediate descendants had been accustomed to the exercise of justice by the king and his great officers, after a rude and informal fashion. Meanwhile, the ordinary councils of King John and of Henry III. were largely influenced by the growing power of the barons, which operated as a restraint upon the arbitrary power of the sovereign. But when Edward I. assumed the throne, a better understanding began to prevail between the monarch and his advisers.[y] The rise of the law-courts out of the *curia regis* begat, in the people generally, a desire for more orderly government. Those who contrasted the regular administration of justice with the irresponsible and uncertain procedure before the king's council, longed for something more in accordance with their ancient Saxon liberties.[z] For the functions of the ordinary council at this time seem to have been coextensive with the functions of the crown. Its consent appears to have been deemed necessary to every important act of the king in the exercise of his legislative as well as of his executive powers. It 'was evidently then considered as a very important part of the government, responsible to the king and the country for the acts done under its sanction; and the people often took great interest in its proper formation, of which there are striking instances in the reigns of Henry III. and Edward II.'[a]

Ordinary council.

Contemporaneously with these events, the 'great

[x] Dicey, p. 8.

[y] Palgrave, King's Council, p. 19; Stubbs, c. xv.

[z] Dicey, p. 11.

[a] First Lords' Report, Lords' Pap. 1820, v. 10, p. 451; Hearn, Govt. of Eng. p. 273.

council' was steadily undergoing transformation, and assuming definite shape as a legislative body, with acknowledged rights and privileges. Formerly, as we have seen, the great council did not differ very materially from the smaller and more confidential assembly. The functions of both were chiefly administrative. The councils of William I. and his immediate successors, so far as existing records show, were principally occupied with matters of executive government—such as the grant of local charters, and the settlement of titles to land.[b] The king could do nearly everything in his 'ordinary council' that was lawful for the great council to effect, except impose taxes. William the Conqueror, in ascending the throne of England, had expressly renounced all right to tax the nation without the consent of the *commune concilium regni*; and had promised to govern by the old laws, except as they might be altered expressly for the general good.[c] It is true that he had not been faithful to his word. The larger council was very rarely convened.[d] But every formal concession on the part of the crown contributed somewhat to the growth and establishment of the great national council upon a firmer basis. And the continual and ever-increasing necessities of the state compelled the Norman sovereigns to yield, however reluctantly, new charters, with extended privileges, to their powerful but insubordinate nobility. Thus the lawless barons won for a downtrodden and spiritless people precious franchises, that in due time should elevate the national character, and 'so balance the forces existing in the state as to give to each its opportunity of legitimate development.'[e]

Great council.

The sagacious policy of Henry II., during his long and eventful reign, did much to prepare the way for

A.D. 1155–1180.

[b] Cox, Ant. Parly. Elecs. p. 61.
[c] Taylor, Book of Rights, p. 9.
[d] Stubbs, v. 1, pp. 358, 369.
[e] Professor Stubbs's learned and admirable Preface to the Chronicle of Benedict of Peterborough (Rolls Chronicles, published in 1867), v. 2, p. xxxvii.

these changes in the framework of English government.

The king and his council.

Though bent upon consolidating the kingly power, Henry II., when not absent from the realm, took frequent occasion to convene the old national assembly, and to ask the counsel of his constitutional advisers upon every possible subject. In fact, many matters were freely discussed at these councils which would be deemed unsuitable for the consideration of Parliament at the present day. But the advice sought for and received, in conformity with ancient usage, did not debar the sovereign from the right to act as his own judgment might dictate upon the particular question.[f]

June 15, 1215.

From the grant of Magna Carta by King John, confirmed and supplemented by similar concessions obtained from later monarchs, may be dated the rise of our representative system,[g] the recognition of the House of Commons as a separate estate of the realm, and the establishment upon a sure foundation of our national liberties.

Rise of our representative system.

The precise period when the representative system of England originated, and the circumstances that gave it birth, are points which, notwithstanding the laborious investigations of constitutional writers, are still involved in great obscurity. The learned authors of the report of the Lords' Committee, however, arrived at the following conclusions upon this subject. They are of opinion that from the Conquest until the reign of John, prelates, earls, and barons (who constituted the three estates of the realm)[h] generally formed, under the king, the legislative power, for all purposes except the imposition of taxes; although the advice of an inferior class in the community, or of particular individuals not of the privileged orders, would be occasionally asked by the king, under exceptional circumstances, as for the purpose of

[f] Stubbs, Const. Hist. v. 1, p. 570. Freeman, in Int. Rev. v. 3, p. 737; Church Quar. Rev. v. 4, p. 438.

[g] *Ib.*, v. 1, pp. 530–543, 622.

[h] *Ib.* v. 2, pp. 168–204. And see

giving validity to the grant of an extraordinary aid to the crown. But it cannot be shown that, at this time, any commoners, elected by the people, or otherwise, were called to the great councils, or Parliaments, as members thereof.[i] That the great council of the realm summoned by John, at St. Albans in 1213, included certain persons who were summoned thereto by virtue of their holding lands in chief of the crown. That some of these individuals gave their personal attendance, others possibly appeared by representation, inasmuch as the lesser barons, being under no peculiar obligation of personal attendance, would naturally incline to select certain of their richest and most influential brethren to represent them.[j] That during the reign of Henry III., important changes probably took place in the constitution of the great council, and most likely, as the result of circumstances, without the intervention of any express law on the subject. That in the forty-ninth year of Henry III., through the instrumentality of Simon de Montfort, Earl of Leicester, a great council was convened, which consisted not only of persons who were summoned personally, by special writ, according to the charter of John, but of persons who were required to attend, not merely by general summons, according to the same charter, but in consequence of writs directed to the sheriffs of certain counties, and to certain cities and boroughs, commanding the recipients to cause 'knights, citizens, and burgesses' to be chosen as representatives of such counties, cities, and boroughs respectively, who should attend the king's council, together with those who had been personally summoned thereto.[k]

Origin of representation.

January 20, 1265.

Historians and antiquarians are agreed in referring to the year 1265, the earliest Parliament of lords, knights, citizens, and bur-

Earliest representation.

[i] See Parry's Parlts. Introd. pp. xii.-xvi.; Cox, Ant. Parly. Elecs. pp. 64-70; Stubbs, v. 1, p. 368.

[j] See Stubbs, v. 1, pp. 527, 564.

[k] See *ib.* v. 2, pp. 92, 221; Simon de Montfort, the creator of

gesses. Before that time, indeed, there had been held many great councils of the nation, but none, so far as extant records show, in which the counties and boroughs of England were represented together.[l]

Early legislative assemblies.

That the first clear evidence remaining of any subsequent convention of a legislative assembly, under similar circumstances, was in the summoning of 'a great and model Parliament' in the twenty-third year of Edward I.;[m] while the constitution of the intervening assemblies is wrapped in uncertainty. That from thence until the fifteenth year of Edward II., the legislative assemblies of England appear to have been generally, but not invariably, composed nearly in the manner in which the assembly in the twenty-third of Edward I. was constituted. That the declaratory statute of the fifteenth of Edward II. gave the sanction of Parliament to the constitution of the legislature as it then stood, under which the legislative power was declared to be in the king, 'by the assent of the prelates, earls and barons, and commonalty of the realm, according as it had been heretofore accustomed.' And that, after this period, the constitution of the legislative assemblies of England had nearly approached the form which it now presents.[n]

A.D. 1295.

A.D. 1322.

Whilst the appropriate functions of the several orders and estates of the realm were thus being gradually developed and matured, the divers elements of which the nation itself was composed were uniting together. From the grant of Magna Carta by John the nation became one, and gradually began to realise its unity. The work of amalgamation, consolidation, and of continuous growth, in progress during the century which succeeded the Norman Conquest, was completed under successive

A.D. 1272–1307.

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the H. of Commons, by R. Pauli: translated (and revised by the author) by U. M. Goodwin, London, 1876; Prothero's Life of Simon de Montfort, London, 1877.

[l] Cox, Antient Parl. Elecs. p. 60.

[m] Stubbs, v. 2, pp. 128, 223, 253.

[n] First Lords' Report, Lords' Pap. 1829, v. 10, pp. 154, 254, 380–391, 473. And see Freeman's Growth of Eng. Const. c. ii.; Cox, Ant. Parl. Elecs. pp. 68–85 and 96; Syme, Rep. Govt. c. i.

monarchs, from John to Edward I.[o] In the reign of Edward I., the protracted struggle between Englishmen, of whatever race descended, and the foreigners who had devoured their substance and overthrown their liberties, finally came to an end. By the efforts of this prudent monarch, the English and the Normans were joined together in a common bond of mutual helpfulness, ancient freedom was revived, and the national institutions began to assume 'those constitutional forms which, with mere changes of detail, they have preserved uninterruptedly ever since.'[p]

Development of constitutional forms.

The century that followed Magna Carta was likewise a period of growth and development, wherein the three estates became conscious of their distinct identity, and entered upon their separate and appropriate spheres of labour.[q]

It was during the reign of Edward I. that the barons, who had hitherto monopolised the ear of the sovereign, and controlled his policy, realised the existence of a new power which it was needful for them to conciliate. The citizens and burgesses, who had accumulated wealth by honest industry, and who were able and willing to contribute to the necessities of the state, were altogether excluded from the national councils. Whether or not this was esteemed a grievance, at this period, it is hard to conjecture: this much at any rate is certain, that they stoutly objected to pay any taxes that were levied upon them without their consent. In 1297, after a fruitless endeavour, on the part of the king, to exact the levy of a rate on the 'communaute' of the kingdom, which they had not agreed to pay, several of the principal peers interposed on their behalf, and obtained a guarantee from the king that no such illegal taxation should be again attempted. Shortly afterwards, the king con-

The Barons forced to recognise the rights of the Burgesses.

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[o] Stubbs, Const. Hist. c. xiii., xiv., xv.

[p] Freeman, v. 1, pp. 6, 122; and Stubbs, c. xv.

[q] Stubbs, v. 1, p. 637.

vened a parliament, wherein this fundamental principle of English liberty was solemnly ratified, by the statute *De Tallagio non concedendo*, which provides that 'no talliage or aid shall by us or our heirs be imposed or levied in our kingdom without the will and assent of the archbishops, bishops, barons, milites, burgesses, and the other freemen of our realm.'[r]

Payment of members.

And here we may notice a practice which prevailed in the early periods of English constitutional history, and which is followed almost universally in other countries where parliamentary government is now established, namely, the payment of wages to representatives. Peers invariably attended parliaments at their own expense, that being one of the services they were obliged to render for the baronies they held of the crown. But as soon as the smaller tenants of the king *in capite*, or freeholders, were permitted to appear by representation, they were subjected to pay the expenses or wages of their representatives. This custom of representatives receiving, and their constituents paying, wages began from a principle of equity, without any positive law; and so continued from 49 Henry III. (A.D. 1265) to 18 Richard II. (A.D. 1394), when a law was passed to regulate and enforce it. The practice prevailed, generally, until the reign of Charles I., and in certain parts of the kingdom to a much later period, when it gradually fell into desuetude.[s] On April 5, 1870, a private member of the House of Commons moved for leave to bring in a Bill 'to restore the ancient constitutional custom of payment of members.' After describing the origin and history of this custom in England, the mover pointed out that while there is great diversity in respect to the amount and mode of payment, the practice exists in every country possessing free institutions, excepting Spain and England, and some of its dependencies. The motion was opposed by the Prime Minister (Mr. Gladstone) on public grounds. He also contended that the charge, if necessary, should be defrayed according to ancient usage, out of local rates, and not out of the Consolidated Fund. On division, the motion was negatived by a very large majority.[t]

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[r] Cox, Ant. Parl. Elec. pp. 71, 77; Stubbs, v. 2, p. 142.

[s] Henry's Hist. of Gt. Britain, 5th ed. v. 10, p. 61; Hats. Prec. v. 2, p. 78, *n*.

[t] Hans. D. v. 200, pp. 1334–1368. See Rept. of a Royal Commission appointed by Govt. of Victoria (Australia), upon the practice of paying or compensating members of the legislature in other countries. (Victoria Assy. Pap. 1869, v. 3, Nos. 7, 18, 20, 26.) Of the Australasian colonies New Zealand and Victoria are the only two that pay their members, the former by an honorarium of 210*l*. voted annu-

Once they obtained an entrance into the great council, the lesser orders speedily began to acquire influence and authority. The growth of the power of the commons is distinctly traceable in the records of the legislative assembly under Edward II. In the preceding reign, in conformity with the usages of an earlier period, the functions of the commons were limited to a declaration of the extent of the grants which they were empowered by their constituents to offer to the crown. But in the time of Edward II. the right of the commons to a share in the making of laws was formally acknowledged; and by the latter part of the reign of Edward III., the power of the commons had so greatly increased that we find them strenuously resisting attempts to impose inordinate taxation, and boldly remonstrating with the king upon his choice of unworthy advisers.[u]

A.D. 1307.

Rising power of the commons.

About this period there was a further development of the power of the commons, in relation to the mode of granting aids and supplies to the crown. In the reigns of Edward I., II., and III., it had been customary for the lords, the clergy and the commons, severally and separately, to determine the proportion of their respective grants, on the principle that they each represented distinct and independent portions of the community.[v]

The three estates of the realm originally sat together in one chamber. When they first began to sit apart is uncertain. No doubt they often deliberated separately, and gave separate advice to the king, long before a formal separation took place.[w] Their division into two houses must have been accomplished at any rate not later than 1341.[x]

Nevertheless, it was obviously desirable that there

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ally for each member, prior to 1884. In that year an Act was passed making permanent this payment. The latter by Act, 1880, but the Leg. Council refused to accept payment for its members. (The Colonies, Nov. 6, 1880, p. 3. *Vide* Act, 1883, No. 754.)

[u] Cox, Ant. Parl. Elecs. pp. 84, 93.

[v] Hatsell, Prec. v. 3, p. 95.

[w] Hearn, Govt. of Eng. pp. 394-407.

[x] Stubbs, v. 2, p. 377, *n.*; v. 3, p. 430.

should be a mutual understanding between the several estates on this subject, as neither would choose to be subjected to a higher rate than the other. It was also expedient that this agreement should be arrived at before any communication upon the matter of supply was made by the commons to the crown. This gave rise to the practice of conferences between committees of the lords and commons preliminary to the grant of supply, upon which occasions each estate counted it an advantage to obtain a knowledge of the intentions of the other before disclosing their own.[y]

A.D. 1407. In the ninth year of Henry IV. the commons complained to the king of the lords, for having made known to his majesty certain particulars in regard to a proposed subsidy before it had been finally agreed upon by both houses, a proceeding which they affirmed to be 'in prejudice and derogation of their liberties.' The protest was successful. The king, with the assent of the lords, made an ordinance declaring that 'the lords on their part, and the commons on their part, shall not make any report to the king of any grant by the commons granted, and by the lords assented to, nor of the communications of the said grant, before the lords and commons be of one assent and accord; and then in manner and form as has been accustomed, that is, by the mouth of the speaker of the commons.' This was another triumph on behalf of the commons, which tended to aggrandise their authority, especially with reference to the grant of public money.[z]

A.D. 1327. Functions of Parliament.

Up to the time of Edward III., it is not easy to define wherein the functions of the national assembly differed from those which appertained to the king's particular council. The judgments of the ordinary council would undoubtedly derive additional weight and solem-

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[y] Cox, Ant. Parl. Elecs. p. 98. Parl. Hist. v. 1, pp. 110, 140, 163-171.
[z] Cox, Ant. Parl. Elecs. p. 100.

nity from being delivered in parliament; and the king himself was probably more ready to receive petitions for redress of grievances when surrounded by all his councillors. The chief point of difference, however, appears to have been, that after the commons were incorporated into the national assembly, a considerable time elapsed before they were permitted to take part in any act or proceeding which bore a judicial character. But in the reign of Edward III. there are instances wherein the commons claimed to participate in the exercise of remedial justice;[a] and before the decease of that monarch, we find all the governmental institutions of England—namely, a king's council, a parliament of two chambers (into which the ancient great baronial council had gradually merged), and courts of law—in 1377.
distinct shape and harmonious exercise.[b]

The 'great councils' continued for a time to be occasionally convened even after their most important functions had devolved upon Parliament. 'Some hundreds of years afterwards,' in 1640, Charles I. sought to find a substitute for the Parliament, with which he had hopelessly quarrelled, by reviving the long-disused baronial 'council.' But the endeavour to resuscitate an obsolete tribunal served only to widen the breach between the king and his people, and to precipitate his downfall.[c]

By the end of the fourteenth century the House of Commons had attained to its full share of political power, in the recognition of its right to represent the mass of the nation, and the vindication of its claim to exercise the powers which in the preceding century had been exclusively exercised by the baronage.[d]

King Edward's legislative assemblies, moreover, were vigilant asserters of popular rights. They obtained from their sovereign repeated confirmations of the Great

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[a] Stubbs, v. 2, p. 604.

[b] Palgrave, King's Council, pp. 22, 64. Dicey, p. 13. First Lords' Report, Lords' Pap. 1829, v. 10, p. 169.

[c] See Dicey, p. 13; Knight, Pop. Hist. of Eng. v. 3, p. 438; Hearn, Govt. of Eng. pp. 407, 461.

[d] Stubbs, v. 2, pp. 306, 390, 401; v. 3, pp. 256, 377.

Charter, and succeeded in establishing three essential principles of government—namely, the illegality of raising money without consent of Parliament; the necessity that both houses should concur in any alteration of the law; and the right of the commons to enquire into abuses, and impeach the councillors of the crown for acts of corruption.[e]

The reign of Edward III. was, in fact, a great constitutional epoch. Independently of the organic changes in the composition of Parliament which characterised that century, it was also remarkable for the frequent holdings of the great national assembly, and for the passing of a law which rendered it imperative upon the king to meet his parliament 'every year once, and more often if need be.'[f] As a rule, under the Plantagenet sovereigns the parliaments were newly elected every time they were convened, and not kept alive from year to year by prorogations.[g]

A.D. 1299–1512.

Frequent meetings of Parliament.

From the latter part of the reign of Edward I. until the early part of the reign of Henry VIII., being a period of 213 years, it was customary for the monarchs of England to consult frequently with the great council of the nation. A year would seldom elapse without a parliament being convened, and sometimes two or three meetings would take place within twelve months. It has been ascertained that in the interval above mentioned, upwards of two hundred separate parliaments were assembled. They usually sat for a period varying from four to thirty days; but, occasionally, the sessions would be protracted for several months.[h]

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[e] Taylor, Book of Rights, pp. 67, 68. Cox, Inst. Eng. Govt. p. 229. Parl. Hist. v. 1, p. 141.

[f] 4 Edw. III. c. 14, confirmed by 36 Edw. III. c. 10.

[g] Stubbs, v. 2, p. 613; v. 3, p. 380. Smith, Parl. Rememb. (1865), p. 7.—The prorogation and reassembling of the same Parliament appears to have first occurred in the reign of Henry VI. But it was not until the accession of Henry VIII. that it became an habitual practice. (Parry, Parlts. pp. 57–59.)

[h] Parry, Parlts. of Eng. pp. 55, 59; Stubbs, v. 2, p. 612.

The Privy Council in Parliament.

And here we may notice, that it had long been customary for the king's councillors, as confidential servants of the crown, to be present at every meeting of the 'Magnum Concilium,' or High Court of Parliament. The select or (as it was afterwards designated) 'Privy Council' were uniformly required by the sovereign to assist at the deliberations of the great council. But it should be borne in mind that the Court of Parliament of this age really signified the House of Lords, and that, in a judicial sense, the terms were and still are synonymous.[i] It was contended by Sir Matthew Hale that in very ancient times, before the reign of Edward I., and perhaps down to the middle of the reign of Edward III. (by which period, at any rate, the Lords and Commons had regularly formed themselves into separate legislative chambers), the Privy Council had an essential right not merely to advise, but also to vote, in the judicial determinations of Parliament.[j] Recent authorities, however, are of opinion that this is erroneous. The privy councillors undoubtedly formed part of the great council, or Court of Parliament, but it is most probable that they merely 'gave reasons,' without voting—as is still done by the assistants in the House of Lords, when required. It is evident, at any rate, that about the time of Edward III. those who sat in Parliament by virtue of their office as king's councillors, began to be regarded in the light of assistants or advisers merely, whilst the authoritative and judiciary power was exercised by the House itself.[k] And Sir Matthew Hale admits that, though 'they were assistants of such a nature, quality, and weight, that their advice guided matters judicial and judicial proceedings in the Lords' House,' yet 'they had no voice in passing of laws,' but only 'spake their judgments and gave their reasons' in

[i] Macqueen, Prac. of Lords and Privy C. pp. 671, 680.

[j] Hale, Jurisdict. H. of Lds. p. 85.

[k] Macqueen, p. 674; Palgrave, King's Council, p. 64.

matters of judicial concern.[l] The Commons, meanwhile, having secured their own position as an integral part of Parliament, and having acquired the right of impeachment, laboured to prevent the council from exercising any extraordinary jurisdiction, or powers not distinctly warranted by law, when acting independently of Parliament. This point they also gained.[m]

Growth of the Privy Council.

Gradually the connection which originally subsisted between the Privy Council and the Court of Parliament, *i.e.* the House of Lords in their judicial capacity, came to be dissolved—though not without leaving traces in existing usage of the old relations—and the Privy Council began to assume a separate and independent jurisdiction of its own. This change took place under Richard II., when the council was entirely separated from Parliament, and entered upon its appropriate functions as a distinct tribunal. With the sanction of Parliament its separate duties were defined, and thenceforward its authority was acknowledged without any further opposition, save only when it attempted to interfere in matters beyond its jurisdiction.[n] The council continued to gain strength and influence until it attained the climax of its powers under the Tudor princes, whose policy was to increase the authority of the Privy Council, and to govern as much as possible without the aid of Parliaments. A notable instance of this is afforded in the reign of Henry VIII., which lasted for nearly forty years, during which period Parliament did not sit in all for more than three years and a half; and during the first twenty years the duration of all its sessions put together was less than a twelvemonth.[o]

A.D. 1397.

Parliament seldom convened.

It will not fail to be observed that the presence, from the very first, of the members of the king's Privy

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[l] Hale, Lords' Jurisdiction, p. 71.

[m] Palgrave, King's Council, pp. 69, 82.

[n] *Ib.* pp. 78, 80, 84, 97. And see *post*, p. 81.

[o] Macqueen, pp. 675, 680.

Council in the great council or Court of Parliament was a foreshadowing of the more intimate relations which were afterwards established between the ministers of the crown and the legislature under parliamentary government.

Relations between the king and his ministers.

In the continuous growth of free institutions which so happily distinguishes the reigns of our English monarchs from the accession of Henry III., a remarkable incident is recorded, of the time of Edward II., which manifests a decided recognition, in that early period, of constitutional relations between the sovereign, his ministers, and parliament. In 1316, the Earl of Lancaster, who had heretofore been a prominent leader of a powerful confederacy of discontented barons, was himself invited by the king to become president of his council. The earl agreed to accept office on certain conditions, which being complied with by the king, he was duly installed in open Parliament; and his oath, or protestation, which embodied the stipulations which he had made, was ordered to be entered upon the rolls of Parliament. After reciting the terms of the appointment, it proceeds as follows: 'So as at any time, if the king shall not do according to his directions, and those of his council, concerning the matters of his court and kingdom, after such things have been shown him,—and that he will not be directed by the council of him, and others—the earl, without evil will, challenge, or discontent, may be discharged from the council,' and that 'the business of the realm' shall not be done without the assent of the members of the council; and if the council 'shall advise the king, or do other thing which shall not be for the profit of him and his realm, then, at the next Parliament, by the advice of the king and his friends, they shall be removed.' The entry on the roll concludes with these emphatic words, which show that the order in the present case was the general and acknowledged rule under similar circumstances: 'And so it shall be, from

A.D. 1316.

Parliament to Parliament, as to them and every of them, according to the faults found in them.'[p]

A.D. 1406. Nearly one hundred years later, in the reign of Henry IV., we meet with a similar instance of the acknowledgment of the right of a minister of state to relinquish his office, without offence to the king, when he found himself unable to continue to discharge the same to the public welfare. It is thus noted by Sir Harris Nicolas: 'In May 1406, the king having taken into his consideration the numerous claims upon his time and attention, in the affairs of the kingdom, appointed three bishops, six temporal peers, the chancellor, the treasurer, the keeper of the privy seal, the steward and chamberlain of his household, and three other persons, members of his Privy Council, and commanded them to exert themselves as much as possible in promoting the welfare, and in maintaining the laws and statutes, of the realm. The king then directed that all Bills indorsed by the chamberlain, and letters under the signet addressed to the chancellor, treasurer, and keeper of the privy seal, should thenceforward be endorsed by, or be written with the advice of, the council.' None of the officers aforesaid, or any others, were 'to grant any charters of pardon, or collations to benefices, except with the advice of the council; and for the greater security and independence of its members, the important condition was added, that they might resign whenever they found themselves unable to perform their duties with advantage to the king's service, without their retirement exciting his displeasure.'[q]

Lord Lovell, who was appointed a member of the council on that occasion, prayed to be, and was, excused from serving, because he had certain suits pending in the courts of law, which, he said, would prevent his performing his duty 'honestement.'[r]

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[p] Parl. Hist. v. 1, p. 64. Parry, Parlts. of Eng. p. 80.

[q] Nicolas, Proceedings Privy Coun. v. 6, p. 146; citing Parl. Rot. v. 3, p. 572.

[r] *Ib.* p. 573.

A.D. 1376.

King's council regulated by Parliament.

But meanwhile Parliament had begun to direct its attention to the character and composition of the king's council.

From the time of Henry III.'s minority to the close of the fourteenth century the National Council had repeatedly preferred a claim to limit the irresponsible power of the king by the election of the great officers of state in Parliament. But it is doubtful whether—unless in one or two exceptional cases—the right claimed was ever exercised; the commons seem generally to have been satisfied when the king informed Parliament of his nominations, and to have tacitly approved of them. But it is curious to note this claim, as a foreshadowing of the most extreme pretensions of parliamentary government. [s]

The king's council restrained by the commons.

Nevertheless, during this period, the commons were unremitting in the endeavour to restrain acts of arbitrary power and of usurped jurisdiction on the part of the king's council, and to control, in the interest of the subject, all abuses connected with the administration of justice.[t]

The commons advise an increase of councillors.

In the last year of the reign of Edward III., the commons undertook to represent to the king, that it would be for his advantage, and that of the whole realm, if he would increase his council with ten or twelve 'lords, prelates, and others, who should be continually near the king; so as no great business might pass without the advice and assent of six, or four of them, at least, as the case required.' His majesty acceded to this request, with a proviso that the chancellor, treasurer, and privy seal might execute their offices without the presence of any of the said councillors. The commons then made further protestation of their willingness to aid the king to the utmost of their power; but pointed to the fact

[s] Stubbs, v. 2, pp. 558, 610; v. 3. pp. 43, 247.
[t] *Ib.* v. 2, p. 605.

that, 'for the particular profit and advantage of some private persons about the king, and their confederates, the realm was much impoverished.' They then proceeded to impeach certain of these evil councillors, and caused them to be dismissed from the king's council, and their goods confiscated[u]—a proceeding which was frequently repeated during the reign of Richard II.[v]

Impeachment and dismissal of councillors.

Henry IV. reigned as a constitutional king; he governed by the help of his Parliament, with the executive aid of a council, over which Parliament both claimed and exercised a large measure of control. Henry V. followed in his father's steps, acting throughout his reign in the closest harmony with his Parliament. But with the overthrow of the house of Lancaster, and the supremacy of the house of York, a reaction set in; the influence of Parliament was diminished. Sessions were held less frequently, and with small results in restraining the impolicy or extravagance of the king, so that, Stubbs tells us, 'the rule of the house of Lancaster was in the main constitutional, and that of the house of York in the main unconstitutional.'[w]

In illustration of the growing power of Parliament, and of its acknowledged supremacy, in the reign of Henry IV., and in that of his son and grandson (Henry V. and Henry VI.), we find certain of the king's household removed upon petition of the commons; and Parliament occupying itself in framing regulations and ordinances for the governance of the king's council and the royal household, which, being made into a statute, the council, together with all the judges, and the officers of the household, at the command of the king, take oath to observe. This is a very important assertion of the principle of ministerial responsibility.[x]

A.D. 1406–1455.

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[u] Parl. Hist. of Eng. v. 1, p. 141. Stubbs, v. 2, pp. 562, 609.

[v] Cox, Ant. Parl. Elec. p. 93.

[w] *Ib.* v. 3, pp. 72, 101, 234, 236, 267, 273.

[x] Nicolas, Proc. P. C. v. 1, p. 62; v. 3, pp. 8, 18; v. 5, p. 13; v 6, p. 73. Parl. Hist. v. 1, pp. 291, 303. Forster, Debates on the Grand Remonstrance, p. 40.

Henceforward, until the accession of Henry VII., the history of the king's council is chiefly remarkable for the gradual development of its administrative functions, for the introduction of forms, intended to operate as constitutional restraints upon the personal exercise of the royal will, and for a corresponding increase of power on the part of the leading ministers of state of whom the council was composed. During the whole of this era, and until the close of the Stuart dynasty, the personal influence and authority of the sovereign continued to be very great, though it necessarily varied according to the ability or strength of character of the reigning monarch. With a vigorous prince upon the throne, the royal supremacy was apt to be energetically maintained to the detriment of all constitutional government, and the council to become the mere instrument of despotic will, the channel through which the royal mandates passed. At other times, the influence of a powerful nobility was exerted to curb the arbitrary exercise of kingly rule, and to aggrandise the authority of his ministers.[y] Moreover, the ministers themselves occupied, to some extent, an independent position. The king could indeed appoint or dismiss them at pleasure; but it was essential that he should have a council of some sort, and certain official personages necessarily formed part of every council. These were the five great officers of state above-mentioned—viz., the chancellor, the lord treasurer, the keeper of the privy seal, the chamberlain, and the steward of the household, who all had seats at the council board *virtute officii*. In addition to these functionaries, the council usually included the Archbishops of Canterbury and York, and from ten to fifteen other spiritual or temporal lords, or men of mark, who possessed the confidence of the king and of

A.D. 1485.

Development of the council.

Its composition.

[y] See Dicey, Privy Council, p. 16. Stubbs, v. 2, pp. 312, 499, 514, 568; v. 3, pp. 247, 250.

Parliament. For while the sovereign had an absolute right to appoint or remove his councillors at pleasure, the English monarchs appear to have been generally careful to choose men as their advisers and ministers who were acceptable to the lords and commons.[1] Some of the official members of the council, during this period, held offices which were not in the direct gift of the crown, but were hereditary in certain families. Again, the presence of the archbishops and other ecclesiastics imparted a dignity and independence to the body otherwise unattainable. With such a position it was not difficult for a refractory council to cause its power to be felt. They were privileged to approach the sovereign with advice or remonstrance upon any matter affecting the common weal. Their rebukes might indeed be disregarded, and their counsel overruled; but the moral effect of their interposition could not be ignored.

Growing power of the council.

What added materially to the weight and influence of the council was that, through the instrumentality of the chancellor, they could refuse to give effect to the king's wishes, or to legalise his grant; for, from a very early period, they had claimed to take cognisance of every grant or writ issued by the king. The 'great seal' remained in the custody of the chancellor, and could not be affixed to any document except by his hand. It is true that this rule was often regarded by sovereigns as a vexatious and unwarrantable restraint; and that they sought to escape from it, either by retaining personal possession of the great seal, or by claiming that signature by means of smaller royal seals (which at first were kept in the king's own hands) was sufficient to authenticate any writ or other missive. But Parliament remonstrated against such practices, and claimed that a rule which was a protection to the crown itself, against fraud, should be strictly enforced. At length the privy

The great seal.

[1] Sir H. Nicolas, P. C. v. 1, pp. ii., iii.

seal passed into the hands of a regular officer, when it was maintained by the lawyers, though contested by the crown, that the great seal ought to be affixed to no bill on a verbal warrant, or otherwise than upon a formal writ of privy seal.[a] These circumstances contributed to confer upon the king's council great and increasing weight and influence.

The privy seal.

Moreover, upon constitutional grounds, this doctrine in regard to the seals was of obvious necessity: for the chancellor could not prove that he had obeyed a royal mandate unless he had a formal warrant to show for what he had done. Yet while this plea, and probably also the convenience to the crown of throwing upon its servants a measure of responsibility for its own acts, reconciled the king to this restriction upon the free exercise of his will, the restraint was felt as peculiarly irksome by the monarchs of England during this epoch. During the reign of Edward IV., that sovereign 'on many occasions enforced his directions in his letters to the chancellor by adding his commands in his own handwriting;' and once it is mentioned of him that he expressed his indignant surprise that the chancellor did not deem his majesty's *verbal* commands 'sufficient warrant' for the issue of a particular instrument.[b]

A.D. 1465.

These constitutional safeguards against the unrestrained exercise of the royal prerogative were enforced, from time to time, by further regulations to the same effect. By an order of the council in the reign of Henry VI., rules were adopted which practically ensured that every grant of the crown should, from the moment of its presentation as a petition, or warrant, to the time of its final sanction by royal writ, be brought under the notice of the king's ministers.[c] In the reign of Henry VIII. all these rules were, in substance, re-enacted; and,

Constitutional securities.

A.D. 1443–1444.

A.D. 1526.

[a] Dicey, pp. 17–20.

[b] Sir H. Nicolas, Proc. of Privy Council, v. 6, pp. 195, 196. Dicey, p. 20.

[c] See Sir H. Nicolas, v. 6, pp. 91–95.

so far as regards the issue of royal patents, grants, &c., they still continue in operation, with but little change, —excepting that grants which were formerly superintended by the Privy Council now pass through the office of a Secretary of State.[d] Nevertheless, the end which was intended to be promoted by these regulations was not in accordance with the modern idea of ministerial responsibility. They were designed for the security of the crown itself, against fraudulent or unnecessary grants; and for this purpose numerous official personages were required to take part in the investigation into and decision upon petitions to the crown. They were also intended to enforce the necessity for consulting the council before the king should determine upon any application for redress. But, after all, the responsibility of ministers for the faithful discharge of their high functions was to the crown, and not to Parliament.[e]

A.D. 1422. It was during the reign of Henry VI. that the 'ordinary' or 'permanent' council first assumed the name of the 'Privy Council.' The habitual attendants at the council, by whom the ordinary business was transacted, came at this time to be distinguished from other members of the same body who, like the judges, were only occasionly summoned by the king. During the minority of Henry VI. this distinction was the more apparent, as the whole government was in the hands of a select number of the king's council. Ordinances of council passed in this reign provide for securing privacy at council meetings, and the keeping its resolves secret, by forbidding any to attend thereat unless specially summoned. Meetings of the 'great council' were occasionally held by the king's command. But it is clear that under Henry VI. a select council was gradually emerging from out of the larger body, by a process similar to that

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[d] Cox, Eng. Govt. p. 648.

[e] Sir H. Nicolas, Proc. P. C. v. 6, p. 200, &c.; v. 7, p. v. Dicey, p. 21.

which afterwards gave birth to the Cabinet from the womb of the Privy Council.[f]

Business before the council.

The business which engaged the attention of the king's council during the epoch under review was of the most multifarious description, and its proceedings exhibit an extraordinary combination of the executive and legislative functions of the government. Grave affairs of state, and questions of domestic and foreign policy; the preservation of the king's peace, and the management of the public finances; the affairs of aliens, the regulation of trade, the settlement of ecclesiastical disputes, and the defence of the faith against heretics and sorcerers—all these subjects, as appears from the minutes which have been preserved of the proceedings of council, formed part of its ordinary administrative labours. Together with these important matters the time of the council was occupied, as that of every government must be, with an infinite number of trivial cases. And although law-courts had been established for the determination of every species of action or suit, we still find the council exercising judicial functions, not merely for the preservation of the public peace, but for the trial of ordinary offenders. Whenever, in fact, either from defect of legal authority to give judgment, or from want of the necessary power to give effect to their decisions, the law-courts were likely to prove inefficient, the council interposed, by summoning before it defendants and accusers. A tribunal of this description was doubtless useful in the infancy of regular institutions for the security of life and property, but its action was arbitrary and capricious. It was regarded with a natural jealousy by Parliament, and from the reign of Edward III. to that of Henry VI. the Commons made vigorous efforts, on repeated occasions, to prevent the

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[f] Dicey, pp. 22, 23; Nicolas, Proc. v. 6, pp. 61, 81, &c. Stubbs, v. 3, P. C. v. 1, p. 73; v. 5, pp. 22, 33; p. 251.

council from interfering with matters which belonged to the courts of law, and from illegally infringing upon the property and liberties of the people.[g]

The records of the Privy Council during the reigns of Edward IV., Edward V., Richard III., and Henry VII. have not been preserved, so that nothing certain is known of the constitution of the council under those monarchs.

A.D. 1485.

Dependence of the council on the king.

With the accession of the Tudor dynasty, the position of the Privy Council towards the monarchy underwent a noticeable change. After the Conquest, the power of the barons had been exerted to curb the despotic will of the sovereign. In later times, the prerogative was exposed to assault from the rising power of the Commons; whilst the nobles, for the most part, loyally supported the throne. The history of the council, from the accession of Henry VII. to the sixteenth year of Charles I., is the history of regal supremacy, potentially exercised through a body of ministers, who had ceased to be a check upon the royal will. This new position of the council towards the crown was mainly brought about by the introduction therein of a number of commoners, who owed their position and influence entirely to the king's favour. The new councillors were doubtless men of mark and ability, but, unless noble by station, they could not be independent of the crown. And where hereditary offices were held by peers, it frequently happened that a deputy was chosen from amongst the commoners, to perform the duties and exert the influence of the post. This gave additional strength to the crown, and was the means of rendering the government more efficient, but it greatly undermined the independence of the council.[h] The change in the composition of the Privy Council did not escape the notice of the common people, by some of

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[g] Dicey, pp. 25–34. Nicolas, Proc. P. C., v. 1, p. ii.
[h] Dicey, pp. 38–42.

whom it was regarded with much dissatisfaction. About twenty-five years after the accession of Henry VIII. there was a rising in Yorkshire. The malcontents demanded of the king redress of grievances. One of their complaints was that the Privy Council was then formed of too many persons of humble birth, whilst at the commencement of his majesty's reign it had been otherwise. The king told them, in reply, that at his accession there were in the council 'of the temporality but two worthy calling noble, the one treasurer of England, the other high steward of our house; others, as the Lords Marney and Darcey, but scant wellborn gentlemen, and yet of no great lands until they were promoted by us, and so made knights and lords: the rest were lawyers and priests, save two bishops, which were Canterbury and Winchester.' Henry proceeded to show that there were then 'many nobles indeed, both of birth and condition,' in the council; but, in conclusion, he informed the rebels, very emphatically, 'that it appertaineth nothing to any of our subjects to appoint us our council, ne we will take it so at your hands. Wherefore, henceforth, remember better the duties of subjects to your king and sovereign lord, and meddle no more of those nor such-like things as ye have nothing to do in.'[1]

A.D 1536.

Complaints against the council.

The altered relations between Church and State at this period, consequent upon the Reformation, contributed greatly to increase the authority of the crown. No longer dependent on a foreign potentate, but on the king himself, the dignitaries of the Church imparted a new vigour to the monarchy, when they ceased to be the representatives of a rival power. But, in proportion as the personal authority of the sovereign increased, the influence of the Privy Council was weakened. The records of the time bear ample testimony to the condition of servility and dependence upon the sove-

[1] Sir H. Nicolas, Proc. P. C. v. 7, pp. 3, 4.

reign to which the council at this epoch had been reduced.[j]

Meanwhile, however, the power of the council as an administrative body was in nowise diminished. On the contrary, this was emphatically the age of 'government by councils.' 'Unconstitutional and arbitrary as many of the ordinances of council in the fifteenth century now appear, they almost seem mild when compared with many of those of the Privy Council of Henry VIII. Combining much of the legal authority with the civil and political, it exerted a despotic control over the freedom and property of every man in the realm, without regard to rank or station. Its vigilance was as unremitting as its resentment was fatal; and its proceedings cannot be read without astonishment, that the liberties and constitutional rights of Englishmen should ever have recovered from the state of subjugation in which they were then held by the crown.'[k] Chiefly concerning itself in securing the internal tranquillity of the kingdom, and in detecting and punishing treason or sedition, the Privy Council also directed its attention to 'nearly everything connected with the conduct of individuals towards each other, and in relation to the government.' It interposed in matters of private concern, making itself the arbitrator of quarrels between private individuals—thereby encroaching upon the province of the established courts of law. It likewise interfered in ecclesiastical affairs, when its proceedings were often of the most despotic character. In all matters brought before it the council exercised a very summary jurisdiction, usually punishing offenders by committing them to the Tower, by fine, or imprisonment, or both.[l] Reviewing the proceedings of the Privy Council during this period, Sir Harris Nicolas is of opinion, 'that the arbitrary and unconstitutional

Government by councils.

[j] Dicey, pp. 42, 43.

[k] Sir H. Nicolas, Proc. P. C. v. 7, p. 24.

[l] *Ib.* pp. 25, 26, 31, 45, 49.

powers which the government then exercised, arose less from the personal character of the reigning monarch, congenial as despotism was to his feelings, than from a gradual encroachment on the liberties of the people, and a corresponding extension of the prerogatives of the crown, during the latter part of the fifteenth, and continued until the middle of the sixteenth century. This innovation may probably be traced to the usurpation of Richard III., followed by the usurpation of Henry VII.; it being scarcely possible for the liberties of a country to survive two revolutions, or for a successful rebel not to become a tyrant.'[m]

Power of the Crown under Henry VIII.

From the constitution of the Privy Council under the Tudor sovereigns, it might be supposed that every political measure, if it did not originate with the Council, was at any rate deliberated upon by that body. But such was not at all the case. 'Henry VIII. was in the fullest sense of the word his own minister; and all the most important matters, particularly in relation to foreign policy, proceeded immediately from his own mind, and were conducted upon his own judgment.' The modified form of ministerial responsibility which we have seen was established by command of Henry IV., and which continued to be enforced in subsequent reigns, was set at nought by Henry VIII., as appears from transactions recorded in State Papers of the period: 'As there were some occasions on which he did not even consult his favourite minister, it may be inferred that there were many more on which he acted without the advice of his council.'[n] For a time Wolsey was his favourite, and then Cromwell; but after the fall of Cromwell, no one minister bore even the slight resemblance presented by these statesmen to a modern premier. In fact, Henry issued his commands to any

[m] Sir H. Nicolas, Proc. P. C. v. 7, p. 66. And see State Papers, published by Commission, containing correspondence between the King and Cardinal Wolsey, v. 1.

[n] *Ib.* pp. 11, 12.

of his ministers, without regard to their peculiar duties; but, 'as no responsibility to the country was incurred, it mattered little whom the king selected to carry his orders into effect. He was himself the centre from which every measure emanated, and his ministers had nothing more to do than to receive his commands and obey them. But all communications between the ministers and the king, relating to the affairs of government, seem, even in that arbitrary period, to have been made through a privy councillor; so that the forms of the Constitution were, in this important point at least, strictly adhered to; and, however forgetful Parliament might have been of its duties, means always existed of fixing the responsibility for the acts of the crown upon those to whom, according to the laws, it entirely and exclusively attaches.'[o]

During the reign of Henry VIII., the greater part of the members of the Privy Council appear to have been in regular attendance upon the king; accompanying him wherever he went, and giving their daily attention to the business of the state. These were usually the great officers of the household, a bishop, and one of the principal secretaries; whilst other functionaries—such as the Lord Chancellor, the Archbishop of Canterbury, the other principal secretary, and a few minor officials—remained in London, to dispose of the ordinary and routine affairs of government. Occasionally, however, the whole council assembled together, either for ordinary purposes, or at the special command of the king.[p]

Division of council into committees.

By means of rules adopted for its internal improvement, the Privy Council was brought to a high state of efficiency for the discharge of the numerous and important duties which devolved upon it at this period. In 1553, King Edward VI. drew up a series of regulations

[o] Sir H. Nicolas, Proc. P. C. v. 7, pp. 14, 15.
[p] *Ib.* pp. 9, 10, 15.

for his council, under which the whole body (which then consisted of forty persons) was divided into five commissions, or (as they would now be termed) committees, to each of which was assigned a distinct branch of public business. Upon some of these committees certain persons, mostly judges, were added. They were styled 'ordinary councillors,' and were not consulted on questions of general policy. This practice has been adhered to to the present day. It was also provided, by these new regulations, that every matter should be brought under the royal notice, that 'if there arise such matters of weight as it shall please the king's majesty to be himself at the debating of, then warning shall be given, whereby the more shall be at the debating of it,' and that the secretaries should be the channel of communication between the councillors and their royal master.[q]

From a very early period it would seem to have been the practice for the Council to meet for the ordinary transaction of business without the king being present. But the sovereign was evidently at liberty to attend whenever he thought fit.[r]

King's secretary.

The office of secretary, or king's clerk, it may be here remarked, was originally held in small estimation. The secretary possessed no political influence, unless, as sometimes happened, he was a member of the council. At length it became necessary to appoint two secretaries, after which, by almost imperceptible degrees, the dignity of the office was increased. During the reign of Henry VII. persons of weight were selected to fill the post. In the following reign we find the secretaryship held by Cromwell. Henceforth the secretaries take rank with barons, are always members of the council, and by the Act 31 Henry VIII. c. 10, become entitled to this position *ex-officio*. But it was not until

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[q] Dicey, pp. 39–43.

[r] Sir H. Nicolas, Proc. P. C. v. 1, pp. 25, 34, 58; v. 7, p. 13. Dicey, p. 15.

the latter part of the reign of Elizabeth that we find them designated Secretaries of State.[8]

By the regulations of 1553, above mentioned, all the business of the Privy Council was transacted through committees which were variously modelled, as occasion required. The same persons sat on different committees. From this arrangement a body known in history as the Star Chamber came into existence, and acquired evil fame from its arbitrary and tyrannical proceedings. The Star Chamber was, in effect, the council under another name. It was frequently presided over by the king himself, and even in his absence transacted business with great dignity and solemnity; hence it will be seen that the council had abated none of its ancient pretensions to the plenary exercise of judicial power. Besides asserting the right to act in almost every case where a law-court had jurisdiction, the king and his councillors avowedly acted 'in cases not examinable in other courts.' The secret tribunal of the Star Chamber continued in operation up to the reign of Charles I., when the struggles of Parliament against the judicial authority of the Council, so long intermitted, were again revived with accumulated vigour, until (by the statute 16 Car. I. c. 10) it was determined that 'neither his majesty nor his Privy Council have, or ought to have, any jurisdiction, power, or authority, by English bill, petition, articles, libel, or any other arbitrary way whatsoever, to examine or draw into question, determine or dispose of, the lands, tenements, hereditaments, goods, or chattels of any of the subjects of this kingdom; but that the same ought to be tried and determined in the ordinary courts of justice, and by the ordinary course of the law.' By the same statute, the power 'that the Council Table hath of late times assumed unto itself, to intermeddle in civil causes and matters only of private interest between party and party,' is

Star Chamber.

Dicey, p. 41. Thomas, Notes on Pub. Dep. p. 27.

declared to be 'contrary to the law of the land, and the rights and privileges of the subject.' The Star Chamber, with its cognate jurisdictions, was accordingly by this Act swept away, and the most part of those judicial powers which the state policy of former generations had bestowed upon the council, were utterly abolished.[t]

Arrests by councillors.

During this period of 'government by councils,' the privy councillors, in addition to their potent authority as members of a board of such pre-eminence in the state, assumed the right of arresting their fellow-citizens at their own individual discretion. It may be thought that such an act would have been justified by the use of the king's name. But the councillors claimed the authority as pertaining to themselves, and the judges admitted the validity of their claim, so far at least as commitments 'by order of the Council Board' as well as by royal command were concerned.[u]

Queen Elizabeth

The government of Queen Elizabeth was conducted almost exclusively through the medium of her Privy Council, individually or collectively; Parliaments (though regularly convened at intervals of from one to four years) being regarded by her as mere instruments of taxation, to which she abstained from resorting except upon necessity. The practical disuse of Parliaments during the Tudor dynasty naturally led to a larger assumption of jurisdiction on the part of the Privy Council, which retained much of the authority thus unlawfully acquired, even after the recurrence by later sovereigns to the constitutional services of Parliament.[v]

The powerful system so elaborately matured by the Tudor sovereigns expired with them; and the period between the death of Elizabeth and the restoration of

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[t] Sir H. Nicolas, Proc. P. C. v. 7, p. 24. Dicey, pp. 45-57, which gives a curious and minute account of the doings of the Star Chamber. See also Palgrave, King's Council, pp. 38, 100, 110. Stephen, Hist. of Crim. Law of Eng. v. 1, c. vi.

[u] Dicey, p. 56.

[v] Macqueen, Privy Council, p. 680.

the Stuarts may be considered as the time when 'government by councils' came to an end.[w] But meanwhile, the Parliaments of Elizabeth, unlike their timid predecessors in previous reigns, were remarkably outspoken; and the Commons did not hesitate to tender their advice to the queen, not merely upon affairs of Church and State, but even upon the more delicate topics of a royal marriage and the succession to the throne. True, they were repeatedly commanded not to interfere in any matters touching her majesty's person, estate, or church government, but such as might be propounded to them by the queen herself; yet they made good their claims to a higher consideration, by successfully asserting the necessity for redressing various grievances affecting the commonwealth.[x] And so there followed in due course, and as it were by natural consequence, 'the mutinous Parliament of James I., and the rebellious Parliament of Charles I.'[y] And, concurrently with these proceedings, new requirements arose on the part of the crown, which could only be met by the cordial assistance of the House of Commons. The circumstances under which the power of Parliament, in contradistinction to that of the monarchy, gained strength and development under the Stuart kings, belong to general history, and need not be here enlarged upon. It will suffice to refer to two leading events, which indicate the process whereby the House of Commons attained the position, co-ordinate in power with the crown itself, which it has occupied since the Revolution of 1688.

Queen Elizabeth and her Parliaments.

Parliament under the Stuart kings.

During the altercations between the Crown and Parliament which characterised the reign of Charles I., it became necessary to provide for the maintenance of a standing army. At first the troops were paid out of the king's own revenues; but James II. having increased

[w] Dicey, p. 59. Hearn, Govt. of Eng. p. 132.
[x] See Parry's Parlts. pp. 214-239. [y] Bagehot, Eng. Const. p. 311.

his army to 30,000 men, it began to be regarded with great jealousy, as being calculated to strengthen the power of the crown, to the detriment of the rights and liberties of the subject. Accordingly, a provision was inserted in the Bill of Rights,[z] forbidding the raising or keeping a standing army within the kingdom, in time of peace, without the consent of Parliament. The practice of appropriating the supplies granted to the crown by Parliament to separate and distinct services was first introduced in the time of Charles II.,[a] though it did not become an established usage until the Revolution, when it was formally incorporated amongst the maxims of the Constitution, that the grant of supply, and the control of the public expenditure in conformity therewith, belongs inalienably to Parliament, and pre-eminently to the House of Commons.[b] By the recognition of these two principles a salutary check was provided against the exercise of arbitrary power, and at the same time the constitutional influence of the House of Commons, as the source of all aids and supplies, was asserted and guaranteed.[c] From this epoch we may date the downfall of prerogative government in England, and the rise of parliamentary government.

Downfall of prerogative government.

But this momentous change in our political system was not effected at once, or without an effort on the part of the crown to recover its ancient supremacy. Irritated by the opposition he systematically encountered from the House of Commons, Charles I. abstained from convoking Parliament for a period of eleven years, from March 1629 to April 1640—a longer interval than had ever before elapsed without some meeting of the national council.[d] At length, in 1640, the famous Long Parliament was assembled.

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[z] 1 Will. and Mary, Sess. 2, c. 2.

[a] See Hearn, Govt. of Eng. p. 342.

[b] Hatsell, v. 3, p. 202. Park's Dogmas, lecture xiii.

[c] Sir J. Mackintosh, Hans D. (O.S.), v. 34, p. 537. Clode, Mil. Forces of the Crown, v. 1, p. 84.

[d] Macaulay, Hist. of Eng. v. 1, p. 85.

The first act of this Parliament, however, was, as we have seen,[e] to abolish the Star Chamber, and to deprive the Privy Council of most of its judicial power, leaving its constitution and political functions unchanged. Nevertheless, after its destruction and the subsequent rise of the vast Colonial empire of Britain, the ancient prerogative of the crown, as the fountain of justice, was held to vest in it, the ultimate appeal in all cases, civil and criminal, from all courts throughout the empire, and a committee of the Privy Council, which is the direct descendant of the old *curia regis*, is to this day the organ by which that prerogative is administered.[f]

Ministerial responsibility.

In all matters of government the will of the sovereign continued supreme; and though ministers were individually powerful, they had not, and were not expected to have, a mutual agreement in regard to public affairs. They often differed amongst themselves on important questions; but as each minister was responsible merely for the administration of his own department, it was not considered essential that they should be of one mind on matters of state policy. The responsibility of ministers, moreover, for the ordinary fulfilment of their official functions, was practically to the king, and to him alone.

Charles I. and the House of Commons.

The course of events which ensued upon the accession of Charles I. to the throne unmistakably proved that a more intimate and cordial understanding between the Crown and Parliament, in the conduct of public affairs, had become indispensable to the very existence of monarchical government. For Charles I. 'had not the power to guide, if he had had the chance; [his] theory of sovereign right was incompatible with the constitutional theory which, rising as it were from the dead, had found its exposition among the Com-

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Ante, p. 93.

[f] Stephen, Hist. Crim. Law Eng. v. 1, p. 182. And see *post*, vol. 2.

mons.'[g] In the protracted contest that arose between the King and the House of Commons, much mutual misunderstanding might have been avoided if Charles had had some confidential minister to espouse his cause and defend his policy within the walls of Parliament. The bitter antagonisms which arose between the king and his people might have been reconciled if only the king's ministers had not been so distasteful to the House of Commons. As it was, the servants of the crown were generally regarded by the commons with mistrust or aversion; and if their acts merited condemnation, there was no alternative but to proceed against them by way of impeachment—a procedure which at the best was a cumbrous process, fruitful of delay, uncertain in its issue, and provocative, meanwhile, of further ill-will against the crown itself. If only some method could have been devised to enable the king's ministers to commend themselves to the goodwill of Parliament, these perpetual causes of irritation might have been effectually removed.

Overtures, indeed, on the part of the Long Parliament, were not wanting to point out to the king terms of agreement and reconciliation; and although they involved for the most part the surrender of more power than the crown was willing to relinquish, it is remarkable that upon one occasion the principle of ministerial responsibility was distinctly adverted to, as a means of conciliating the favour of Parliament, and of protecting the king from evil counsellors. In the Grand Remonstrance addressed by the House of Commons to Charles I., in 1641, reference is made to 'those cases of not infrequent occurrence, when the commons might have just cause to take exceptions at particular men for being selected to advise the king, and yet have no just cause to charge them with crimes.' It is added that

Grand Remonstrance.

[g] Stubbs, Const. Hist. v. 3, p. 505.

'the most cogent reasons might exist to be earnest with the king not to put his great affairs into such hands, though the commons might be unwilling to proceed against them in any legal way of impeachment.' It is then plainly stated, 'that supplies for support of the king's own estate could not be given, nor such assistance provided as the times required for the Protestant party beyond the sea, unless such councillors, ambassadors, and other ministers only were in future employed as Parliament could give its confidence to.'[h] But the king had already declared that he would neither separate the obedience of his servants from his own acts, nor permit them to be punished for executing his commands.[i] Conciliation, therefore, was impossible; the time for moderate counsels to prevail had gone by, and the downfall of the monarchy was the deplorable but inevitable consequence. The circumstances which led to this event belong to general history, and need not be dwelt upon in these pages. Suffice it to state that, after a brief contest with the Long Parliament and its adherents, Charles I. was taken prisoner, tried, and executed on January 30, 164$\frac{8}{9}$.

Execution of the king.

Immediately afterwards Parliament proceeded to take steps to provide for the future government of the country. On February 7, they voted 'that the office of a king in this nation was unnecessary, burthensome, and dangerous,' and should be abolished; and having on the previous day decreed the abolition of the House of Peers, they ordered, 'that there be a Council of State erected, to act and proceed according to such instructions as shall be given to them by the House of Commons.'[j] In the composition of this council, the parliamentary majority were in a position to carry out

Council of State.

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[h] Forster, Debates on the Grand Remonstrance, pp. 272, 273.

[i] See Gardiner's Hist. of Eng. 1624-1628, v. 1, c. viii. Campbell's Chanc. v. 2, p. 532.

[j] Parl. Hist. v. 3, pp. 1285, 1292. Com. Journ. Feb. 7, 164$\frac{8}{9}$.

their own ideas as to the sort of persons who ought to be entrusted with supreme authority, and to ensure that the administration of public affairs should be in direct conformity with their own opinions. For a time the experiment proved successful, and, thanks to the energy, learning, and political experience of the leading men in the Council of State, the government of the country, so long as it remained in their hands, was conducted with much wisdom and ability.[k]

The Council of State consisted of forty-one persons, lords and commoners, who were chosen by the House of Commons in the name of 'the Parliament of England,' and of whom nine were a quorum for the dispatch of business. A majority of the councillors were also members of the House of Commons; and as the average number of members attending that House did not then exceed fifty, the Council naturally became the more powerful body; and having all the public business of the nation under review, they left but little for the House to do, except to confirm, by Act, such matters as the Council thought fit to submit for their sanction.[l] But, in point of fact, it was usual for the Council to refer all matters of special importance to the consideration of the House, who were thus enabled to exercise a controlling influence over their proceedings.[m]

The Council of State was eminently a deliberative body, and the rules which they framed for their own guidance were calculated to ensure the most attentive and careful consideration of every subject before them, by the members present at any particular meeting.[n] Either directly, or through their committees, the Council also

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[k] Bisset, Commonwealth of Eng. v. 1, pp. 49, 118–123.

[l] Parl. Hist. v. 3, p. 1291. Bisset, Commonwealth of Eng. v. 1, pp. 24, 36.—The original minutes of all the proceedings of the Council of State, until its overthrow by Cromwell, are preserved in the State Paper Office, in excellent condition. (*Ib.* p. 30.)

[m] Bisset, v. 1, p. 43; v. 2, pp. 55, 57.

[n] *Ib.* v. 2, pp. 203-206.

transacted the business which is now apportioned amongst various departments of state. Besides affairs belonging to the Treasury, and to the different branches of the secretariat, they were charged with the trust heretofore exercised by the Lord High Admiral and by the Master of the Ordnance.[o] The creditable and successful manner in which their multifarious labours were accomplished is the more remarkable when it is considered that on an average eighteen or twenty members attended at sittings of the Council, and that frequently the number present was much larger.[p]

The Council was chosen for a period of one year only, at the expiration of which term all the members were re-elected except three. Two were added to supply vacancies by death, so that there were in all but five new members. But at the end of the second year Parliament resolved to adopt a different principle. Accordingly, on February 5, 165$\frac{0}{1}$, they decided that the Council of State for the ensuing year should again consist of forty-one members, but that only twenty-one of the existing councillors should be capable of re-election. The same rule was followed upon the election of the Council for the fourth time.[q] In November 1652, anticipating the regular period by nearly three months, the Council was again re-elected upon a similar principle for the fifth and last time.[r]

Cromwell.

But on April 20, 1653, Oliver Cromwell, who had always been one of the Council of State, from its first institution, having forcibly put an end to the Rump Parliament, and established himself as military dictator, went to the Council of State, who were assembled at their customary place of meeting at Whitehall, and informed the assembled members that their official existence had terminated, inasmuch as the Parliament from

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[o] Bisset, v. 1, p. 116; v. 2, p. 72.

[p] *Ib.* v. 1, pp. 118–123; v. 2, pp. 77, 293, 377, 386.

[q] *Ib.* v. 2, pp. 146, 234.

[r] *Ib.* p. 369.

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whence their authority had been derived was defunct.[s] Thus ignominiously expired the famous Council of State, which had ruled England with singular vigilance and success for about four years and a quarter. Lacking the stability which the authority and influence of a constitutional monarchy can alone convey, the statesmanship and fidelity to the trust committed to them displayed by these eminent men failed to preserve them from overthrow, and they became the easy prey of an unscrupulous usurper.

Cromwell's council.

In lieu of this able and influential body, that had steadily refused to co-operate with Cromwell in his ambitious designs,[t] a phantom council was set up, consisting of seven members, six of whom were military men, to act as Cromwell's nominal advisers. But this was a mere 'barrack-room council,' entirely dependent upon Cromwell himself.[u] Subsequently the dictator convened a Council of State, which included eight officers of high rank and four civilians; but the latter served merely as a convenient screen, and the body continued to be, to all intents and purposes, a military council.[v] When, in December 1653, Cromwell accepted the office of Protector of the Commonwealth, he consented to receive from Parliament a council of fifteen persons, to be appointed by statute, with power, by advice of the Council, to increase their number to twenty-one. But he only waited until he was firmly seated upon the presidential chair, to proceed to act, in most important matters, without an order of council, and without, as it would seem, even consulting his legal advisers.[w] The several Parliaments convened by Cromwell during his protectorate proved for the most part refractory and unmanageable; and it was entirely owing to his own

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[s] Bisset, v. 2, p. 467.
[t] *Ib.* p. 452.
[u] *Ib.* pp. 475, 476.
[v] Forster, British Statesmen (Cromwell), v. 7, p. 129.
[w] *Ib.* p. 231, *n*

extraordinary vigour and administrative skill that his government achieved the measure of success which, especially in the foreign relations of England, has been generally and deservedly associated with his name.[x] Cromwell's dictatorship lasted for five years, when it was ended by his death, which occurred on September 3, 1658. After a brief period of anarchy, the nation, tired of intestine strife, gladly welcomed the restoration of the monarchy.

Restoration of the monarchy.

With the accession of Charles II. a new and transition period began, during which the Parliament continued to increase in strength and influence, while the old antagonisms between the ministers of the Crown and the House of Commons were revived with all their former bitterness. The inveterate misgovernment of the restored line of Stuarts[y] finally brought about the Revolution of 1688, an event which not only produced a change of dynasty, but was the means of confirming our national liberties, and placing them upon a more secure foundation. By the introduction of the king's ministers into Parliament at this epoch harmonious relations were at length established between the crown and the legislative bodies, and the old abuses of prerogative government were abolished for ever.

Revolution of 1688.

In reviewing the history of the English Constitution from the Norman Conquest until the accession of William of Orange, certain points appear deserving of especial mention. Firstly, that the seeds of the present political system of Great Britain were sown in the earliest days of our national existence, begetting fruit which has since continuously matured. Secondly, that the responsibility of advising the crown in all affairs of state belonged originally to the Privy Council, an insti-

Development of our national polity.

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[x] See Goldwin Smith's lecture on Cromwell in his 'Three Eng. Statesmen' (London, 1867).

[y] Cox's Walpole (Pownall's Pap.), v. 3, p. 616.

tution which is as old as the monarchy itself. Thirdly, that the reigning sovereign has always, and especially when the Privy Council was a numerous body, selected, and by his prerogative had a right to select, certain persons of that council, in whom he could especially confide, and by whose advice he more particularly acted. So that it may be said that at no period has the king of England been without sworn advisers who could be held responsible for all his public acts. Fourthly, that the authority and jurisdiction of the Privy Council have been made from time to time the subject of parliamentary regulation; but that, nevertheless, under prerogative government, such was the difficulty of enforcing the responsibility of ministers to Parliament that, except in case of high crimes and misdemeanours, which could be punished by impeachment, it was virtually inoperative; and therefore the principle of responsibility could only be applied to the ordinary conduct of public affairs by a resort to the extreme measure of withholding the supplies. Fifthly, that the want of a cordial understanding between the sovereign and the legislative assemblies was the fruitful source of dissension and misgovernment, which led, in 1649, to the overthrow of the monarchy, and in 1688 to the transference of the crown to a prince of the House of Orange, who was 'called in to vindicate practically those maxims of liberty for which, in good and evil days, England had contended through so many centuries.'[a] And, lastly, that the attempt under the Commonwealth to establish a Council of State which should reflect the opinions of the House of Commons, and be composed of the most prominent and influential members of that body, however promising at the outset, speedily and entirely failed, from the lack of that element of stability which the authority and influence of a constitutional monarch can alone supply.

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[a] Taylor, Book of Rights, p. 211.

Growth of constitutional government.

It is also noticeable, that even during the reign of the Tudor sovereigns, when the power of the crown was predominant over everything, and Parliament was weak and subservient, principles were at work which ultimately tended to the further advancement of constitutional government. It was then that the great offices of state began first to assume form and method, and the complex machinery of administration to settle into something like its modern aspect. The Secretaries of State, originally mere clerks appointed to do the king's bidding, became by degrees potent functionaries, with certain defined powers and responsibilities. The office of Chancellor, too, was at this period brought nearly to its present shape. That of Lord High Treasurer, or First Commissioner of the Treasury, and that of Lord High Admiral, or First Commissioner of the Admiralty, came to be then of fixed appointment and establishment. Thus, instead of the arbitrary and irregular selection of early times, the principal officers of state were duly appointed to discharge the functions of administration, and to advise the sovereign in the government of the realm. The persons appointed by the king to fill these posts, if not already of the Privy Council, were invariably added to that dignified assembly; and as the most trusted servants and advisers of the crown, they formed the nucleus of the confidential council, which was afterwards known as 'the Cabinet.' This powerful governing body, heretofore a pliant instrument in the hands of the reigning monarch, was made responsible to Parliament by the Revolution of 1688. The Bill of Rights, while it left unimpaired the just rights and privileges of the crown, rebuked the excessive claims of prerogative, redressed the grievances of the people, gave vigour and certainty to the efforts of Parliament, secured its independence, and recognised its inquisitorial functions, so that henceforth it was free

The Cabinet made responsible to Parliament.

to assume that watchful oversight and control over the administration of public affairs, which is now acknowledged to be its peculiar and most important vocation.[a]

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[a] See Mr. Adam's speech, Parl. Deb. v. 16, pp. 2 * * * *. -7 * * * *.

CHAPTER III.

THE ORIGIN AND PROGRESS OF PARLIAMENTARY GOVERNMENT.

In the endeavour to enforce the principle of ministerial responsibility for all acts of government, it speedily became apparent that some constitutional provision was necessary to require that the advisers of the crown, through whose agency all affairs of state are conducted, should be publicly known—in order that they might be held accountable to Parliament for the advice they had given to the sovereign, and for the consequences of acts which had been brought about through their own instrumentality. This was strikingly exemplified in the case of the Partition Treaties, which occurred in 1698. The House of Commons were of opinion that these treaties were highly injurious to the public interests, and it was proposed to impeach Lord Somers, who, as Chancellor, had affixed to them the great seal. Somers, in his defence, alleged that he had opposed the treaties, but that he had put the great seal to one of them by the king's command, considering that he was bound to do so. Dissatisfied with this explanation, the Commons resolved upon his impeachment. They also determined to impeach the Earl of Portland, Lord Orford, and Lord Halifax, who, as prominent members of the administration, were held responsible for advising this objectionable measure. But it proved that these noblemen had had nothing to do with the matter, and that the treaties had been negotiated by the king himself. Lord Somers was acquitted by the House of Lords, not-

Case of the Partition Treaties.

withstanding the unwarrantable nature of his defence, in trusting for the justification of his conduct to the king's command; an excuse which was entirely at variance with the true principles of responsible government, and which, if recognised as sufficient, would deprive Parliament of all control over the executive administration.

Contrast the conduct of Lord Somers in this particular with that of his successor in the chancellorship, Lord Hardwicke, who, on two occasions when required by George II. to put the great seal to conventions concluded by the sovereign himself, positively refused to do so, solely because he deemed the treaties in question to be injurious to the interests of England.[a]

The proceedings against the other members of the ministry were equally unsuccessful, it being impossible to prove that they had been parties to the obnoxious treaty.[b] Foiled in their attempt to bring home to anyone responsibility for this act of arbitrary power, the House of Commons set about the adoption of measures to prevent a repetition of the offence. This they endeavoured to effect by the introduction of a clause into the Act of Settlement which provided, that after the accession of the House of Hanover, 'all matters relating to the well-governing of this kingdom, which are properly cognisable in the Privy Council by the laws and customs of this realm, shall be transacted there, and all resolutions taken thereupon shall be signed by such of the Privy Council as shall advise or consent to the same.'[c] This provision was meant to compel the discussion of all state affairs in full Privy Council, and to discriminate between the responsibility of those who promoted and those who opposed each resolution, by requiring all who voted for it to sign their names thereto. It was, however, soon perceived

Responsibility of Privy Councillors.

[a] Harris's Life of Hardwicke, v. 2, pp. 59, 369; v. 3, p. 539.

[b] Hallam's Const. Hist. v. 3, p. 253; Campbell's Chanc. v. 4, pp. 156-158.

[c] 12 & 13 Will. III. c. 2, § 4.

that such a system would cause infinite delay and embarrassment in governing the kingdom; while doubtless it was also obnoxious to the ministry, who were not as yet prepared to assume such a definite responsibility, involving with it prospective anticipations of impeachment and disgrace.[d] Accordingly, in the following reign, before the time when it was to have come into operation, it was formally repealed.[e]

According to modern usage, but one kind of public document is signed by all the members of the Cabinet, as Privy Councillors, and that is, the order for general reprisals which constitutes a declaration of war. Such an order was issued against Russia in 1854, and was signed by all the members of Lord Aberdeen's Cabinet.[f]

Impeachment of ministers.

Another clause in the Act of Settlement,—which appears to have been framed in connection with the foregoing,—declared that no pardon under the great seal should be pleadable to an impeachment by the Commons. This salutary provision still remains in force, and is calculated to increase the sense of individual responsibility of ministers. It has been interpreted by Blackstone as designed to prevent the royal pardon from being available pending an impeachment, and in bar to its progress; but not to restrain a pardon after the conclusion of the trial.[g]

Although the Act of Settlement proved abortive to ensure the direct accountability of the advisers of the crown to Parliament, yet that result was gradually brought about by the course of events, in a way that was quite unforeseen by the politicians and statesmen who effected the Revolution.

William III.

William III. had been summoned to the throne of England by the two Houses of Parliament, in order that he might rule as a constitutional sovereign. The rights

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[d] Creasy, Eng. Const. p. 332. Parl. Hist. v. 6, p. 474.

[e] 4 & 5 Anne, c. 8.

[f] H. Reeve, in Ency. Brit. 9th edit. p. 620.

[g] Step. Com. Ed. 1874, v. 4, p. 471.

and liberties of the subject, for infringing which King James had forfeited his crown, had been declared by Parliament in a document which was presented to the Prince of Orange upon his assumption of the government. They had afterwards been embodied in the Bill of Rights, as part of the fundamental laws of the kingdom, and the motive and condition of the revolution-settlement. The king, on his own part, was sincere in his resolve and endeavour to discharge his sacred obligations with fidelity. But owing to the natural reserve of his disposition, and his large capacity for administration, he relied much less upon the advice of his ministers than would now be expected of a constitutional king. In fact, according to the testimony of Hallam, William was eminently his own minister, and was better fitted for that office than any of those who served him.[h] In all domestic matters, as a general rule, he was wont to consult his ministers,[i] and to govern through their instrumentality; but he still preserved in his own hands the supreme control.

In 1701, when the reign of William III. was drawing to a close, it was made the subject of complaint by Lord Sunderland, in a letter of advice addressed to Lord Somers, that his majesty evinced too much neglect and distrust of his cabinet; the remonstrance was summed up in these significant words: 'It would be much for the king's service if he brought his affairs to be debated at that council.'[j]

Questions of war and diplomacy, however, the king reserved to himself; and his advisers, conscious that they were less versed in military and foreign affairs than their royal master, were content to leave with him the command of the army, and to know only what he thought fit to communicate about the instructions which he gave to his own ambassadors, or concerning the conferences which he held with the ambassadors of

[h] Hallam, Const. Hist. v. 3, pp. 252, 388.

[i] Macaulay, v. 3, p. 538.

[j] Pict. Hist. of Eng. v. 4, p. 134.

foreign princes.[k] We have seen the consequences of this policy in diplomatic affairs in the matter of the Partition Treaties; but so deep-seated was the conviction that military affairs were a branch of the prerogative that belonged exclusively to the king himself, that it was not until the year 1806 that it was fully conceded that the management of the army, in common with all other prerogatives, was subject to the supervision of ministers.[l]

His first parliamentary administration.

To William III., however, is due the credit of the formation of the first administration avowedly constructed upon the basis of party, in order that it might carry on the king's government in conformity with the general political views of the majority of the House of Commons. This ministry was composed of statesmen who had seats in one or other of the Houses of Parliament; thereby supplying a defect in the scheme of government, the want of which in the plan propounded in the Act of Settlement was sufficient to account for the failure of that projected reform. The history of this remarkable transaction, which constitutes such a memorable epoch in our political annals, is reserved for another chapter, in which it is proposed to treat, with more detail, of the origin and development of the cabinet council. Suffice it here to state, that during this reign the distinction between the cabinet and the privy council,—and the exclusion of the latter from deliberation upon all affairs of state, except of the most formal description,—was fully established, and that the king's ministers in Parliament became the authorised representatives of the crown, for the purpose of introducing, explaining, and defending the measures of government; thereby practically asserting a constitutional principle, which it was reserved for another generation to bring to maturity, that ministers

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[k] Macaulay, v. 5, p. 123.

[l] See *post*, p. 121.

are responsible to Parliament for every act of the crown in the conduct of public affairs.

Hanoverian dynasty.

Henceforward (to use the words of May) a succession of monarchs arose, less capable than William, and of ministers gifted with extraordinary ability and force of character, who rapidly reduced to practice the theory of ministerial responsibility. Under the sovereigns of the House of Hanover, the government of the state was conducted throughout all its departments by ministers responsible to Parliament for every act of their administration, without whose advice no act could be done, who could be dismissed for incapacity or failure, and impeached for political crimes; and who resigned when their advice was disregarded by the crown or their policy disapproved by Parliament. With ministers thus responsible, 'the king could do no wrong.' The Stuarts had strained prerogative so far that it had twice snapped asunder in their hands. They had exercised it personally, and were held personally responsible for its exercise. One had paid the penalty with his head; another with his crown; and their family had been proscribed for ever. But now, if the prerogative was strained, the ministers were condemned, and not the king. If the people cried out against the government, instead of a revolution there was merely a change of ministry. Instead of dangerous conflicts between the crown and the Parliament, there succeeded struggles between rival parties for parliamentary majorities; and the successful party wielded all the power of the state. Upon ministers, therefore, devolved the entire burthen of public affairs; they relieved the crown of its cares and perils, but, at the same time, they appropriated nearly all its authority. The king reigned, but his ministers governed.[m]

Origin of party government.

Making use of their undoubted prerogative of selecting their own ministers, it had been customary for the sovereigns of England, anterior to the Revolution, to choose men to fill the high offices of state upon personal grounds, without regard to their general agreement upon political questions. Party as well as parliamentary government originated with William III., who, in 1696, constructed his first parliamentary ministry upon an exclusively Whig basis. But the idea was unhappily abandoned by the king in his subsequent administrations, and it was not until the House of Hanover

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May, Const. Hist. v. 1, pp. 5, 6.

ascended the throne that ministers were, as a general rule, exclusively selected from amongst those who were of the same political creed, or who were willing to fight under the same political banner. Queen Anne was inclined to favour the Tories, and in 1710 she authorised the appointment of a decidedly Tory ministry: upon the accession of George I., however, the Whig party obtained possession of the government, and continued for a long time to maintain the upper hand, compelling the king to sacrifice his personal inclinations in favour of their party leaders.[n]

Influence of the great Whig families.

The reigns of the first three Georges were characterised by the strife of rival factions to obtain possession of office, and to coerce the sovereign, by the united influence of the great families, to choose his ministers exclusively from amongst themselves. George I. and his successor succumbed to the necessity of conciliating the aristocracy, who by their wealth and territorial possessions had obtained supremacy in the councils of Parliament. But subjection to Whig control in any shape was peculiarly irksome to George III., who being naturally fond of power, determined when he became king to use his prerogative to the fullest possible extent. Accordingly, when he succeeded to the throne he immediately endeavoured 'to loosen the ties of party, and to break down the confederacy of the great Whig families. His desire was to undertake personally the chief administration of public affairs, to direct the policy of his ministers, and himself to distribute the patronage of the crown. He was ambitious not only to reign, but to govern. His will was strong and resolute, his courage high, and his talent for intrigue considerable. He came to the throne determined to exalt the kingly office; and throughout his long reign he never lost sight of that object.'[o] The constant aim of

George III.

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[n] May, Const. Hist. v. 1, p. 7. [o] *Ib.* v. 1, p. 10.

the king was to be, in effect, his own minister. 'When ministers not of his own choice were in office, he plotted against them and overthrew them; and when he had succeeded in establishing his friends in office, he enforced upon them the adoption of his own policy.' The king's tactics were frequently at variance with the principles of constitutional government, but credit is due to him for his conscientious and intelligent activity in the promotion of the public weal. 'That he was too fond of power for a constitutional monarch, none will now be found to deny; that he sometimes resorted to crafty expedients, unworthy of a king, even his admirers must admit. With a narrow understanding and obstinate prejudices, he was yet patriotic in his feelings, and laboured earnestly and honestly for the good government of his country. If he loved power, he did not shrink from its cares and toil. If he delighted in being the active ruler of his people, he devoted himself to affairs of state even more laboriously than his ministers. If he was jealous of the authority of the crown, he was not less jealous of the honour and greatness of his people. A just recognition of the personal merits of the king himself enables us to judge more freely of the constitutional tendency and results of his policy.'[p]

The foregoing description of George III. is taken from the first chapter of May's 'Constitutional History.' It vividly portrays the chief points in the character of that monarch, upon whom such various judgments have been passed. By some he is regarded as the model of a 'patriot king,' whilst others point him out as a bigoted, selfish monarch, obstinate, and wholly regardless of constitutional rights when opposed to his own policy or prejudices. But whatever opinion we may entertain of his personal character, we have no right to judge his proceedings by the strict rule of parliamentary

[p] May, Const. Hist. pp. 13, 14.

government, as it is now interpreted; for that system was still in its infancy when George III. was king, and the usages of the constitution in that day warranted a more direct and extended interference in the details of government by the occupant of the throne than would now be deemed justifiable or expedient. Further consideration, however, will be bestowed on this subject when treating of the office of sovereign in relation to parliamentary government. We must now proceed to notice certain particulars of the king's public conduct, which claim particular attention on account of their bearing upon the history and development of ministerial responsibility.

The 'king's friends.'

George III., during at least the earlier part of his reign, was in the frequent habit of conferring secretly upon public affairs with noblemen and others who were not members of the Cabinet, but who were personally devoted to the king, and willing to aid him in carrying out his own peculiar views. His object in this was evidently to create a new party, faithful to himself, and dependent entirely upon his will. He succeeded; and the party came to be known as 'the king's men,' or 'the king's friends.' Instead of relying upon the advice of his responsible ministers, the king often took counsel with those whom Burke describes (in his 'Thoughts on the Cause of the Present Discontents') with some oratorical exaggeration as his 'double' or 'interior cabinet.' His first speech to Parliament was not even submitted for the approval of his ministers, but was drawn up, by the king's command, by ex-Chancellor Hardwicke, who, when in office, had had much experience in the preparation of royal speeches, and in whose skill and judgment his Majesty had peculiar confidence. One important paragraph is known to have been written by the king himself, and the whole speech was forced upon the ministry, who consented very reluctantly to adopt it as

their own.[q] 'This "influence behind the throne" was denounced by all the leading statesmen of the day—by Mr. Grenville, Lord Chatham, the Marquis of Rockingham, the Duke of Bedford, and Mr. Burke. Occasionally denied, its existence was yet so notorious, and its agency so palpable, that historical writers of all parties, though taking different views of its character, have not failed to acknowledge it. The bitterness with which it was assailed at the time was due, in great measure, to political jealousies, and to the king's selection of his friends from an unpopular party; but on constitutional grounds it could not be defended.'[r] For at least five years after his accession to the throne it has been generally supposed that George III. was more or less guided by Lord Bute, whether in or out of office, as his chief adviser.[s] After the retirement of Lord Bute from his secret counsels, his Majesty was still surrounded by a numerous party of friends, some of whom held office in the government or household, but who severally 'looked to the king for instructions instead of to the ministers.' 'But the greater part of the king's friends were independent members of Parliament, whom various motives had attracted to the personal support of the king. They formed a distinct party, but their principles and position were inconsistent with constitutional government. Their services to the king were not even confined to council or political intrigue, but were made use of so as to influence the deliberations of Parliament. The existence of this party, and their interference between the king and his responsible advisers, may be traced, with more or less distinctness, throughout the whole of this reign. By their means the king caballed against his ministers,

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[q] Harris, Life of Hardwicke, v. 3, p. 231.

[r] May's Hist. v. 1, pp. 11, 12.

[s] *Ib.* pp. 22, 27, 30; Parl. Deb. v. 16, p. 9. See Ed. Rev. v. 126, p. 14; Greville Memoirs, v. 1, p. 84.

thwarted their measures in Parliament, and on more than one occasion effected their overthrow.'[t]

By the encouragement which he afforded to these irregular practices, it is undeniable that George III. violated a foundation principle of the constitution, and hindered the progress of parliamentary government, which, when faithfully carried out, should foster and promote reciprocal confidence between the sovereign and his responsible advisers. We are not prepared to assert, however, that under no circumstances whatever is the sovereign justified in seeking advice from others than those who form part of his recognised administration. Every peer of the realm is an hereditary councillor of the crown, and is entitled to offer advice to the reigning monarch. The king, moreover, is at liberty to summon whom he will to his Privy Council; and every privy councillor has in the eye of the law an equal right to confer with the sovereign upon matters of public policy. The position and privileges of cabinet ministers are, in fact, derived from their being sworn members of the Privy Council. It is true that by the usages of the constitution cabinet ministers are alone empowered to advise upon affairs of state, and that they alone are ordinarily held responsible to their sovereign and to Parliament for the government of the country. Yet it is quite conceivable that circumstances might arise which would render it expedient for the king, in the interests of the constitution itself, to seek for aid and counsel apart from his cabinet. Such an occasion, it may be urged, was found in the events which led to the dismissal of the Coalition ministry of Fox and North in 1783. It will be remembered that the Bill for the government of India, which had been drawn up by Mr. Fox, had been formally sanctioned by his Majesty, and

Who may advise the king.

Dismissal of the Coalition ministry in 1783.

[t] May, Const. Hist. v. 1, pp. 31-47, 57, 79, 81, 88, 98; Massey. Geo. III. v. 1, pp. 67, 114, 242.

passed triumphantly by the influence of the ministry through the House of Commons, before the true character of the measure was understood, either by the sovereign or by the country at large. The eyes of the king were opened to the real scope and tendency of the Bill by ex-Chancellor Thurlow, who availed himself of his privilege as a peer to obtain access to the king, and to advise him what course he should pursue at this juncture. As soon as the Bill reached the Upper House, George III. authorised Lord Temple, one of his 'friends,' to oppose it, and even to use his name to defeat it in that chamber. Succeeding in this, the king then dismissed his ministers, and empowered Mr. Pitt to form a new administration. In taking office, Mr. Pitt, as he was constitutionally bound to do, justified to the country the removal of his predecessors, and assumed entire responsibility for the same. Only by such a course, indeed, was it possible that the conduct of the king could be condoned, in a constitutional point of view. Even so, it must be admitted that the course he pursued in this emergency was unusual, extreme, and most undesirable to establish as a precedent; more especially in regard to the mode in which he brought about the rejection of the India Bill—namely, by the use of his own name to influence the proceedings of the legislature. For the crown cannot take notice of business actually depending in Parliament without a breach of privilege, and an infringement of the independence which belongs to both branches of the legislature, as component parts of the supreme power of the state.[v] But the question is, not whether the king chose the best course that was open to him to thwart the designs of the unscrupulous men who had obtained control, both in the ministry and in Parliament, but whether we are warranted in so far

[v] Bowyer's Const. Law, pp. 135, 136; Hats. Prec. v. 2, pp. 352–356. See further, on this subject, *post*, v. 2.

limiting the exercise of personal authority on the part of the sovereign as to deny him the right to interfere when his ministry are about to consummate an act which, in his opinion, is fraught with danger to the state, and is injurious to the common weal. It may be urged that, having lost confidence in his ministers, the king should have immediately dismissed them; but events were scarcely ripe enough for such a step. For, while the right of the sovereign to dismiss his ministers is unquestionable, constitutional usage prescribes that it should be exercised on grounds which can be justified by Parliament;[w] and as the king had agreed to the introduction of the India Bill, although in ignorance of its true character, and it had already passed the House of Commons, he could scarcely venture to dismiss his ministry on that account until he had succeeded in unmasking their designs, and in bringing about their defeat on the measure in the House of Lords. To assist his judgment and afford him substantial help at this crisis, the king naturally had recourse to the advice of trusty friends, on whose fidelity he could rely. There is no question that, in a constitutional point of view, any peer or privy councillor who may advise the crown becomes himself responsible to Parliament for such advice,[x] and should be prepared to admit and assume the same, in order that, in the words of Lord North,[y] 'advice and responsibility might go hand-in-hand.' The king, however, having succeeded, with the assistance of his friends, in arresting the further progress of the obnoxious Bill, immediately entrusted the reins of government to Mr. Pitt, who, while he could not vindicate in every particular the means made use of in bringing about the change of ministry, nevertheless assumed the

Advice and responsibility must go together.

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[w] See May's Hist. v. 1, p. 126.

[x] Ld. Lansdowne and Ld. J. Russell, Hans. D. v. 130, p. 387. And see Welln. Desp. 3rd ser. v. 4, p. 225, Ld. Palmerston's note. Martin, Pr. Consort, v. 5, p. 261.

[y] Parl. Hist. v. 24, p. 201; and see *Ib.* v. 23, p. 678.

responsibility of that change before Parliament and the country.'[2] Thus the authority of the sovereign was rescued from the meshes of political intrigue in which it had become involved; partly by the machinations of the ambitious men who had then the upper hand, and partly by reason of the king's own irregular acts; and the chariot of the state proceeded once more along the beaten tracks, duly subjected to constitutional control.

Mr Pitt's first administration.

The position of Mr. Pitt, on accepting office, was one of peculiar difficulty. He had to contend almost single-handed against an overwhelming majority of the House of Commons, marshalled by Fox, North, Sheridan, and other able politicians, who were indefatigable and unscrupulous in their endeavours to effect his overthrow. But he resolutely determined to maintain his ground as the king's minister, and to abstain from a dissolution of Parliament, though this was repeatedly urged upon him by his Majesty, until he could be satisfied that there was a decided reaction in the country in his favour, indications of the commencement of which began to be speedily manifested. He therefore boldly continued the struggle from December 22 to March 24, notwithstanding reiterated votes of want of confidence and every hindrance (short of an actual refusing of the supplies, from which even the factious Opposition shrank) that the ingenuity of his opponents could devise.

Meanwhile, 'the loyalty of the people was aroused, and they soon ranged themselves on the side of the king and his ministers. Addresses and other demonstrations of popular sympathy were received from all parts of the country; and the king was thus encouraged to maintain a firm attitude in front of his opponents. The

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[2] See Stanhope's Life of Pitt, v. 1, pp. 153-155. Massey's George III. v. 3, p 224. See also Ld. Campbell's account of these transactions, in his Lives of the Chanc. v. 5, p. 565. This sound constitutional lawyer does not hesitate to express his approval of the king's conduct in this emergency.

tactics of the two parties in Parliament, and the conduct of their leaders, were also calculated to convert public opinion to the king's side. Too much exasperated to act with caution, the Opposition ruined their cause by factious extravagance and precipitancy. They were resolved to take the king's cabinet by storm, and without pause or parley struck incessantly at the door. Their very dread of a dissolution, which they so loudly condemned, showed little confidence in public support. Instead of making common cause with the people, they lowered their contention to a party struggle. Constitutionally, the king had a right to dismiss his ministers, and to appeal to the people to support his new administration. The Opposition endeavoured to restrain him in the exercise of this right, and to coerce him by a majority of the existing House of Commons. They had overstretched the legitimate limits of their power, and the assaults directed against prerogative recoiled upon themselves.'[a]

The king's views of his ministry.

The private letters of the king to Mr. Pitt, at this period, show us the light in which his Majesty regarded the conduct of the House of Commons towards the minister of his choice. Writing to Mr. Pitt shortly before the dissolution of Parliament, the king says, 'he [Mr. Pitt] will ever be able to reflect with satisfaction, that in having supported me, he has saved the constitution, the most perfect of human formation.'[b] And, on another occasion, the king refers to his own course as 'calculated to prevent one branch of the legislature from annihilating the other two, and seizing also the executive power.'[c] While it is necessary that the king's government should be carried on in harmony with the House of Commons, a due regard to the royal prerogative certainly requires that, in the first instance, the

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[a] May's Hist. v. 1, pp. 71, 72. *Ib.* p. 293.
[b] Tomline's Life of Pitt, v. 1, p. 321.

choice of the crown, in selecting the ministers of state, should be respected, and no hasty or factious opposition be directed against them, until they have given proof of incapacity or unfitness for the duties they have been selected by the crown to discharge. This the Parliament of 1784 were unwilling to allow; and accordingly when, at the fitting moment, the king and his minister appealed to the people, the result of the dissolution was the return of a large majority in favour of the new minister, who thus commenced a long lease of power, secure alike in the good will of the people and of the crown. In Mr. Pitt, George III. found a minister after his own heart, of high ability, unswerving integrity, and firmness of purpose. Nevertheless, the king never surrendered, even to his favourite minister, the unrestricted exercise of the prerogative, but himself shaped the general policy of his government, and personally influenced the distribution of patronage, both in Church and State.[d]

Fox and Grenville ministry.

After the death of Mr. Pitt, in 1806, the king was obliged to accept of an administration taken chiefly from the Whig party, in whom he had no confidence. The ministry of 'All the Talents,' under the presidency of Lord Grenville and Mr. Fox, was forced, by political considerations, upon the king. Before the arrangements were completed, a difficulty arose on a point of prerogative. During the negotiations, 'Lord Grenville proposed to his Majesty some changes in the administration of the army; by which the question was raised whether the army should be under the immediate control of the crown, through the commander-in-chief, or be subject to the supervision of ministers. The king at once contended that the management of the army rested with the crown alone; and that he could not permit his ministers to interfere with it, beyond the

Control of the army by ministers.

[d] May, v. 1, pp. 75, 85.

levying of the troops, their pay and clothing. Lord Grenville was startled at such a doctrine, which he conceived to be entirely unconstitutional, and to which he would have refused to submit. For some time it was believed that the pending ministerial arrangements would be broken off; but on the following day Lord Grenville presented a minute to his Majesty, stating that no changes in the management of the army should be effected without his Majesty's approbation.' With this proviso the king assented to the ministerial claims; and thus the sole remaining branch of the public service, heretofore considered as to a certain extent exempted from such interference, was brought under ministerial control.[e]

Office of commander-in-chief of the army.

So recently as 1743, it was claimed that the king, as commander-in-chief, had an absolute power of appointing and cashiering officers of the army, and was not bound by the advice of a responsible minister; who, nevertheless, was responsible to Parliament for a wrong use of the prerogative.[f]

George III., for the first thirty years of his reign, claimed and exercised an irresponsible authority over the management and patronage of the army. The secretary-at-war, though nominally responsible to Parliament in military affairs, was actually limited in his powers to financial control.[g]

In 1789, the secretary-at-war admitted 'that he was in some sort officially responsible for every measure taken in the military department,' which Mr. Fox said 'he was glad to hear, and that they had for the *first* time learnt, that they actually had such a person as a responsible *military* minister.'[h]

In 1793, the king insisted upon appointing the general who should command the expedition to Flanders. He chose the Duke of York, who proved to be so incapable, that Mr. Pitt demanded that he should be brought before a court-martial. The king would not agree to this, and Pitt at last yielded, on condition that the appointment of general and all other arrangements of the foreign expeditions should be made in future by ministers, and not by the king. George III. assented to this condition, in order to save his son from

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[e] May's Hist. v. 1, p. 87, quoting Ann. Reg. 1806, p. 26; Lewis, Admin. p. 287.

[f] Parl. Hist. v. 12, p. 560. Clode, Military Forces, v. 2, pp. 73, 337.

[g] Fonblanque, Life of Burgoyne, p. 456.

[h] Parl. Hist. v. 27, pp. 1312, 1318.

exposure. Accordingly, the appointments for the Egyptian expeditions were made by Pitt himself and Lord Grenville, without the interference of the king.[i] But it was not until 1810 that, in consequence of further disclosures, showing the evil of such interferences with ministerial responsibility, that the 'personal rule' of the sovereign in military matters was entirely done away with.[j]

After the death of the Duke of York (December 9, 1826) George IV. attempted to become commander-in-chief in his own person, proposing to manage the army through a board of general officers and the secretary-at-war. But the objections to this plan were too serious to be overcome, and his Majesty gave way. The Duke of Wellington was then appointed to the command of the army;[k] nevertheless, in 1829, King George IV. filled up vacancies in the constableship of Windsor Castle, and in the colonelcy of the 1st Life Guards, without even informing his minister of these arrangements.[l]

In 1850, the Duke of Wellington himself urged Prince Albert to consent to succeed him as commander-in-chief, but the Prince's constitutional knowledge induced him to withhold his consent from this tempting offer, and the command was afterwards conferred upon Lord Hardinge.

Quarrel between the king and his ministers.

Lord Grenville's ministry was then completed, but it was of very brief duration. The death of Mr. Fox, which speedily followed that of his great rival, led to several changes in the cabinet, and the following year a difficulty occurred between the king and his ministry, which led to their dismissal.[m]

The point at issue arose out of an attempt on the part of ministers to induce the king to agree to a Bill to remove certain disabilities from Roman Catholics and dissenters. But the king resisted the proposal, and ministers withdrew their Bill. Whereupon the king demanded of them a pledge that they would not again propose any similar measure. This they refused to give, and were accordingly dismissed from office.[n] This question will hereafter engage our attention, when the

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[i] Sir G. C. Lewis' Letters, p. 394.
[j] Kinglake, Crimea, v. 6, p. 78.
[k] Quar. Rev. v. 133, p. 310. D. of Wellu. Civ. Desp. v. 4, p. 222.
[l] D. of Wellu. Civ. Desp. v. 6, pp. 153, 162–166, 181.
[m] Hans. D. March 26, 1807.
[n] National Rev. v. 14, p. 388.

relations between a constitutional sovereign and his responsible advisers are discussed. Meanwhile it is worthy of remark, that May, in reviewing this transaction, condemns alike the conduct of ministers in their hasty and unauthorised minute, and the conduct of the king in endeavouring to exact a pledge from his cabinet that they would never again obtrude their advice upon him in regard to the Roman Catholic claims. He also distinctly asserts that the incoming ministers were responsible for the conduct of the king concerning the pledge, as though they had themselves advised it.[o]

Personal influence of George III.

From this time until the close of the reign of George III. no further question arose which affects the history of ministerial responsibility. The king's 'own power, confided to the Tory ministers who were henceforth admitted to his councils, was supreme. Though there was still a party of "the king's friends," his Majesty agreed too well with his ministers, in principles and policy, to require the aid of irresponsible advisers.'[p] The personal influence of the king was, indeed, very considerable throughout the whole of his reign, and was a great source of strength to such ministers as enjoyed his favour. It was, on the contrary, a continual cause of difficulty to ministers who were so unfortunate as to incur his disapprobation.[q]

Strength of ministers in Parliament.

In reviewing the history of this reign, we cannot fail to notice the ease with which the successive administrations who held office were able to control the House of Commons, and to carry on the government in connection therewith. This was mainly attributable, no doubt, to the number of seats in that House which were virtually in the nomination of the crown, or in in the hands of the leading aristocratic families, from

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[o] May, Const. Hist. v. 1, pp. 96, 97.

[p] *Ib.* p. 98.

[q] Sir G. C. Lewis, Adminis. of Gt. Brit. p. 420.

amongst whom the members of the cabinet were, at that time, exclusively chosen.[r]

Influence of the great governing families.

The great governing families of England have always been divided in their political opinions. Had they been of one mind, their influence would have been irresistible. As it was, the Whigs and Tories were continually struggling for the mastery. Sometimes the heart of the nation would incline to favour the traditions of the monarchy, embodied in the Tory creed; again, the ideas of progress which were the battle-cry of the Whigs would be in the ascendant. George III., as we have seen, was strongly biassed on behalf of the Tory party; and no wonder, for the 'great Tory peers and patrons of boroughs, who, by their influence in counties and their direct power of nomination, commanded the votes of a large section of the House of Commons, were willing, in general, to support any ministry which the king appointed, and to permit all the influence of the crown to be exercised in its favour, provided that their own personal wishes respecting the distribution of patronage received due attention. They contented themselves, as politicians, with a barter of power for patronage; they gave the former and received the latter. The great Whig lords, however, made a harder bargain with the crown. They insisted upon selecting the king's ministers before they consented to support them. They required that an administration should be formed of members of their own party, whose names should be proposed by their own leaders.'[s]

Between the oligarchies of the two great parties, says Sir G. C. Lewis, 'there was this great difference, that whereas the Tories submitted themselves absolutely to the will of the king, the Whigs gave him only a conditional support; they insisted on his government

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[r] See *ante*, p. 10.

[s] Lewis, Adminis. of Gt. Brit. p. 88. Fitzmaurice, Life of Ld. Shelburne, v. 3, pp. 223, 238, 501.

acting upon their political principles, and being formed of persons who would carry those principles into effect, though they might be unpalatable to the crown.' The king 'chafed at the oligarchy of the Whig houses, because the Whigs put a bit in his mouth; whereas the Tory party was a quiet beast of burden, which he could ride or drive as he pleased. The real contest in those days was, not between aristocracy and democracy, but between aristocracy and monarchy' The plan of Reform advocated by Mr. Pitt, in 1780, was mainly directed to emancipate Parliament from the influence of the crown, exercised through the nomination boroughs, and to prevent the king from bartering patronage for seats. He sought thus to diminish the influence of the crown in the House of Commons, which, in the words of Dunning's famous resolution of April 6, 1780, 'had increased, is increasing, and ought to be diminished.' But ere long this desirable object was attained by other means. The labours of Edmund Burke in the cause of economic reform, the abolition of sinecure offices, and the reduction of the pension list within reasonable limits, sufficed to curtail the excessive and unwarrantable abuse of crown patronage. For this reason, principally, Mr. Pitt refrained from any further advocacy of parliamentary reform. When the question was revived by Lord John Russell, after the Peace, and made a ministerial question by the Grey administration, it had entirely changed its aspect. 'The influence of the crown was no longer formidable; and the measure of 1831 was aimed at the diminution of the power of the aristocratic proprietors of close boroughs, by the same means which Pitt proposed to employ to diminish the power of the crown.'[t]

Mr. Pitt's plan of parliamentary reform.

Character of George IV.

George IV., when Prince of Wales, had been the bosom friend of Fox and Sheridan, and it was supposed

[t] Lewis, Adminis. pp. 91-99.

that upon his accession to the throne he would promote the Whigs to place and power. But when, in 1811, during the incapacity of his father, he became prince regent, he evinced a remarkable and increasing indifference to the principles and persons of the Whig leaders. After the death of the old king—on January 29, 1820—he made no change in his policy, but continued to repose confidence in the ministers of whom his father had approved. So that, during the whole of his reign (1820-1830), the Tories maintained their ascendency in the cabinet and in the legislature. Indifferent to the exercise of political power, and chiefly concerned in gratifying his taste for pomp and luxury, George IV. rarely attempted to interfere with his ministers, except in matters personally affecting himself, or some of the royal family, when he could be very resolute and determined.[u] So far as general politics were concerned, he usually acquiesced in the views of his constitutional advisers, and co-operated with them in their measures for the public good. In fact, he appears to have taken a lively interest in the progress of state affairs, judging from the active correspondence he kept up with his ministers.[v] From defects of personal character, the regal influence of George IV. was limited to the strict exercise of the prerogative; and his personal influence was so small, that it was even difficult for his ministers to bear the weight of his unpopularity, and to uphold the respect due to the crown, when it encircled the head of such an unworthy sovereign.[w] On one point of public policy, however, he attempted to make a stand, in behalf of his own sense of right, namely, upon the question of further concession to the Roman Catholic claims, but ministers

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[u] Campbell's Chanc. v. 7, pp. 345, 346. See Welln. Desp. 3rd ser. v. 4, p. 665, and v. 6, p. 293.

[v] See Stapleton's Canning and his Times, pp. 416, 437, 445. Welln. Desp. 3rd ser. *passim*.

[w] Lewis, Adminis. p. 421

were firm, and obliged him to give way. For George IV. had not his father's spirit, and could not persevere in opposing an act which he nevertheless considered to be contrary to his coronation oath, and a dereliction of his duty as a Protestant king.[x]

Case of Queen Caroline.

The domestic relations of George IV. were, it is well known, extremely unhappy; and they led, in 1820, to serious difficulties between the king and his ministers, which threatened to terminate in an open rupture, a catastrophe which was only averted by the patience and good sense of ministers themselves. Some account of these events will afford a valuable illustration of the ministerial *status* during this reign. The queen having, when Princess of Wales, disgraced herself by levity of conduct, and exposed herself to the charge of adulterous practices, the king desired the premier to prepare, without delay, a bill of divorce against her. He also determined if possible to proceed against his guilty consort for high treason. The cabinet, however, were not in favour of such severe measures. In a minute dated February 10, 1820, ministers communicated to the king their opinion, individually as well as collectively, that a proceeding against the queen for high treason was out of the question; and that to attempt to procure a divorce might seriously prejudice the interests of the crown and of the monarchy, inasmuch as, bearing in mind the king's own conduct, it would be impossible to establish a case sufficient to justify the grant of a divorce by Act of Parliament. They agreed, however, to propose certain measures to prevent personal annoyance to his Majesty by the return of the queen to England, and were willing to justify the king in omitting her name from the Liturgy, and refusing to allow her to be crowned. The king replied to this memorandum at considerable length, reiterating his objections. On February 14, the cabinet

[x] See *post*, p. 185.

re-stated to the king their unanimous opinion that, whatever other measures they might agree to propose, they could not recommend the introduction of a Bill of Divorce. The king was angry, and peremptorily reiterated his commands. Whereupon his ministers, finding expostulation fruitless, threatened to resign. No other men could be found to take their place, on condition of performing what they had refused to do; accordingly the king, sorely against his will, yielded, being 'ready, for the sake of decorum and the public interest, to make this great and this painful sacrifice of his personal feelings.'[y] Queen Caroline.

A few weeks afterwards we learn, through a private letter from Lord Chancellor Eldon to his daughter, that the king 'has been pretty well disposed to part with us all, because we would not make additions to his revenue.'[z] Upon which transactions a recent historian justly remarks, 'These minor troubles have a happy capacity for adjustment in a constitutional monarchy, when responsible ministers possess the requisite degree of firmness.'[a] The king was well aware that he could not ask his advisers to advocate any measures affecting himself individually, but such as they could properly submit for the sanction of Parliament, upon their own personal responsibility; and that, had he taken upon himself, under such circumstances, to dismiss his ministry for refusing to be subservient to his wishes, he would have found it difficult, if not impossible, to induce any one to take their places, and assume the responsibility of his act. Notwithstanding the criminatory evidence obtained against the princess in 1806, and again in 1819, ministers determined to take no

[y] See the correspondence between the king and his ministers on this subject, in Yonge, Life of Ld. Liverpool, v. 3, cc. xxiv., xxv. Lewis, Adminis. pp. 356–411. Torrens, Life of Melbourne, v. 1, p. 145.

[z] Twiss, Life of Eldon, v. 2, p. 362.

[a] Knight's Hist. of Eng. v. 8, p. 165.

Queen Caroline.

active measures against her unless she should obtrude herself upon public notice by demanding to be regarded as Queen of England. She imprudently decided upon this course, and in the summer of 1820 left the continent, where she had been residing for several years, and made her appearance in London, for the purpose of prosecuting her claims. On the day of her arrival in London, a message from the king was presented to both Houses, communicating certain papers respecting the conduct of her Majesty since her departure from the kingdom, and recommending them to the immediate and serious attention of Parliament. In the House of Lords, on the motion of Lord Liverpool (the prime minister), these papers were referred to a committee of secrecy, upon whose report a Bill of Pains and Penalties for the degradation of the queen, and for her divorce from her husband, was introduced by his lordship. After evidence taken at the bar, the second reading of this Bill was carried by a majority of 28. In committee a motion was made to expunge the divorce clause, which, though unsuccessful, was voted for by all the ministers present, nine in number. By this proceeding they preserved their consistency, and maintained their independence of the personal influence of the king. On November 10, the third reading of the Bill was carried by a majority of nine only; whereupon Lord Liverpool arose, and announced that the measure would be abandoned. In the state of excitement which prevailed throughout the country on the question, and the feeling which existed against the king, the attempt to carry the Bill through the House of Commons, after such a close division in the Lords, would have been most disastrous, and would probably have resulted in the overthrow of the administration, whose popularity had been already diminished by the degree of assistance they had rendered to the king on this occasion.

The reign of William IV. has been rendered memor-

1830-1837. William IV. and the Reform Bill.

able by the passing of the Reform Bill; a measure to which the king was at first opposed, but which was ultimately carried through Parliament with a high hand by his own personal exertions. Impressed with the necessity for Reform, to save the country from revolution, and to avert the perils anticipated by the defeat of the Bill in the House of Lords, the ministry extorted from the king a pledge to create a sufficient number of peers to turn the scale in favour of Reform; but a dread of the consequences of such an arbitrary proceeding induced the king, with the knowledge and consent of his ministers, to cause a circular letter to be addressed to the Opposition peers, urging upon them to drop all further resistance to the Bill, so that it might pass without delay, and as nearly as possible without alteration.[b] This direct interference with the independent deliberations of the House of Lords, however objectionable it may appear, was not unprecedented under the peculiar circumstances of a conflict between the two Houses.[c] At any rate, it was a less obvious evil than the creation of additional peers, and it had the desired effect.

Effects of the Reform Bill.

The Reform Bill became law, through the active interposition of the crown, and with the reluctant assent of the House of Lords. It has effected an important revolution in the English political system. Professedly based upon a 'careful adherence to the acknowledged principles of the constitution, by which the prerogatives of the crown, the authority of both Houses of Parliament, and the rights and liberties of the people, are equally secured,'[d] it has contributed, in its consequences, to increase the power of the House of Commons, not only by lessening the aristocratic

[b] Roebuck's Hist. of the Whig Ministry, v. 2, pp. 331, 334.

[c] See *post*, p. 191. For a fuller discussion of this point, see *post*, v. 2.

[d] The king's speech at the opening of Parliament, in June 1831. And see Earl Russell's comments thereon, in his Eng. Const. p. 52.

influence of the proprietors of close boroughs, but also by diminishing the strength of the crown in that assembly. The disfranchisement of constituencies, in England alone, which formerly returned 143 members, the distribution of seats to various localities hitherto unrepresented, and the general extension of the franchise, have been the means of emancipating a large proportion of voters from the direct influence of the landed gentry, and of introducing into the House of Commons a body of independent members, who cannot be relied upon as the staunch supporters of any political party, but who think and act for themselves.[e] This has brought about a silent but material change in the relations between Parliament and the ministers of the crown. The stable administrations of former days have passed away, and no government can now expect to continue in office by dint of mere party strength. The House of Commons has become more difficult to control, from the lack of a sufficient number of members upon whose support an existing ministry could generally depend, and from the necessity of conciliating the goodwill of divers important and independent interests, which are now represented therein.[f] Nevertheless, as we have already remarked,[g] the influence of 'the great governing families of England,' though materially reduced, is still powerful over many constituencies. And while the representation of the people has been made more direct and efficient, rank and hereditary property have been permitted to retain a fair proportion of legitimate influence in that chamber which has become the source and centre of political authority.[h] To this we owe it that the complex machinery of parliamentary government has continued in successful operation, and that

Increasingly difficult to control the House of Commons.

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[e] See *ante*.
[f] See Ed. Rev. v. 95, p. 225.
[g] *Ante*.
[h] See May, Const. Hist. v. 1, p. 355; v. 2, p. 84.

the House of Commons has been hitherto preserved from the evil effects of democratic ascendency.

Two years after the passing of the Reform Bill, the prerogatives of the crown were again called into activity, in a manner which seemed to revive the political history of 1784. Lord Grey's government had lost the confidence of the king. The retirement of several members of the cabinet on the question of the appropriation of the surplus revenues of the Church of Ireland excited the apprehension of the king as to the safety of the Irish Church, and, without consulting his ministers, he gave public expression to his alarm, in replying to an address of the prelates and clergy of Ireland.[i] 'The ministry, enfeebled by the loss of their colleagues, by disunion and other embarrassments, soon afterwards resigned; notwithstanding that they continued to command a large majority in the House of Commons. They were succeeded by Lord Melbourne's administration, which differed little in material politics and parliamentary strength. But this administration was distasteful to the king, who had meantime become a convert to the political opinions of the Opposition.'[j]

Dismissal of his ministers by William IV in 1834.

Taking advantage of the removal of Lord Althorp from the leadership of the House of Commons, and from the office of Chancellor of the Exchequer, owing to his accession to a peerage by the death of his father, the king suddenly dismissed his ministers, and consulted the Duke of Wellington upon the formation of a government from the Tory party, who were in a decided minority in the House of Commons.[k] The propriety of this act has been questioned by May, for the reason that 'all the usual grounds for dismissing a ministry were wanting. There was no immediate difference of opinion between them and the king upon any measure or

[i] See *post*, p. 286.

[j] May, Const. Hist. v. 1, p. 120.

[k] See *post*, p. 194.

question of public policy; there was no disunion among themselves, nor were there any indications that they had lost the confidence of Parliament. But the accidental removal of a single minister—not necessarily even from the government, but only from one House of Parliament to the other—was made the occasion for dismissing the entire administration. It is true that the king viewed with apprehension the policy of his ministers in regard to the Irish Church; but his assent was not then required to any specific measure of which he disapproved, nor was this the ground assigned for their dismissal. The right of the king to dismiss his ministers was unquestionable; but constitutional usage has prescribed certain conditions under which this right should be exercised. It should be exercised solely in the interests of the state, and on grounds which can be justified to Parliament—to whom, as well as to the king, the ministers are responsible. But here it was not directly alleged that the ministers had lost the confidence of the king: and so little could it be affirmed that they had lost the confidence of Parliament that an immediate dissolution was counselled by the new administration. The act of the king bore too much the impress of his personal will and too little of those reasons of state policy by which it should have been prompted; but its impolicy was so signal as to throw into the shade its unconstitutional character.'[1]

Ministry of Sir R. Peel, in 1834.

The Duke of Wellington advised that the formation of the new administration should be entrusted to Sir Robert Peel; and as that statesman was abroad at the time, he himself accepted the office of First Lord of the Treasury, together with the seals of office as Secretary of State, which, there being no other secretary, constituted his grace Secretary for the Home, Foreign, and Colonial Departments.

[1] May, Const. Hist. v. 1, pp. 122, 123. And see Trevelyan, Life of Macaulay, v. 2, p. 54.

Upon the arrival of Sir R. Peel, he immediately waited upon the king, and accepted the proffered charge. And 'so completely had the theory of ministerial responsibility been now established that, though Sir R. Peel was out of the realm when the late ministers were dismissed—though he could have had no cognisance of the causes which induced the king to dismiss them—though the Duke of Wellington had been invested with the sole government of the country without his knowledge, he yet boldly avowed that, by accepting office after these events, he became constitutionally responsible for them all, as if he had himself advised them.[m] 'He did not attempt, like the ministers of 1807, to absolve himself from censure for the acts of the crown, and at the same time to denounce the criticism of Parliament, as an arraignment of the personal conduct of the king, but manfully accepted the full responsibility which had devolved upon him.'[n]

A dissolution of Parliament was at once determined upon; its result proved, upon the whole, unfavourable to Sir Robert Peel, for, although his own supporters were largely increased, yet a majority against his ministry was returned. For a while he endeavoured, with great tact and consummate ability, to carry on the government, but he was confronted at every turn by a hostile and enraged majority in the House of Commons, and compelled to succumb. After several previous discomfitures he was defeated on a resolution affirming that no measure on the subject of tithes in Ireland could be satisfactory that did not provide for the appropriation of the surplus revenues of the Irish Church. He then resigned, and Lord Melbourne's administration, with some alterations, was reinstated. But it is remarkable that the appropriation of Irish Church property to other

Replaced by the old Whig ministry.

[m] Hans. D. 3rd ser. v. 26, pp. 216, 223.

[n] May, v. 1, p. 125. And see *post*, p. 196.

uses, which was a favourite project of the Whigs at this time, and the immediate occasion of the change of ministry, was afterwards abandoned, and the resolution of the House of Commons, upon which Sir Robert Peel resigned, remained a dead letter on the Commons' Journals.[o]

The failure of the efforts of William IV. in favour of the Tory party was complete, and it affords an instructive illustration of the effects of the Reform Act, in diminishing the ascendant influence of the crown. In George III.'s time the dismissal of a ministry by the king, and the transfer of his confidence to their opponents—followed by an appeal to the country—would certainly have secured a majority for the new ministers. Such had been the effect of the dissolutions in 1784 and 1807. But the failure of this attempt to convert Parliament from one policy to another by royal prerogative and influence proved that, with the abolition of the nomination boroughs, and the extension of the franchise, the House of Commons had emancipated itself from the control of the crown; and 'that the opinion of the people must now be changed before ministers can reckon upon a conversion of the Parliament.'[p]

Waning authority of the crown.

Reign of Queen Victoria

Lord Melbourne's ministry continued in office during the rest of the king's reign, and on the accession of our present gracious queen, in 1837, she confirmed them in their places, and gave them her entire confidence.[q] In 1839, however, they were obliged to resign office, on account of their inability to carry on the government with success. Sir Robert Peel was then charged with the formation of a new ministry. Acting upon the advice of Lord Melbourne, her Majesty was induced, on this occasion, to insist upon retaining the ladies of her household, notwithstanding the change of ministry. This

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[o] See *post*, p. 200. [p] May, v. 1, p. 127. See also Ed. Rev. v. 115, p. 211.
[q] See *post*, v. 2.

decision of the Queen compelled Sir Robert Peel to relinquish the task entrusted to him, and the Melbourne administration were reinstated. But being defeated upon a vote of want of confidence in the House of Commons in 1841 they again resigned, when Sir R. Peel was sent for, and fully empowered to make such alterations as he thought fit in the composition of the royal household. More particulars in regard to this transaction will be found in a subsequent chapter.[r]

'From this time,' says May, 'no question has arisen concerning the exercise of the prerogatives or influence of the crown which calls for notice. Both have been exercised wisely, justly, and in the true spirit of the constitution. Ministers enjoying the confidence of Parliament have never claimed in vain the confidence of the crown. Their measures have not been thwarted by secret influence and irresponsible advice. Their policy has been directed by Parliament and public opinion, and not by the will of the sovereign, or the intrigues of the court. Vast as is the power of the crown, it has been exercised through the present reign by the advice of responsible ministers, in a constitutional manner, and for legitimate objects. It has been held in trust, as it were, for the benefit of the people. Hence it has ceased to excite either the jealousy of rival parties or popular discontents.'[s]

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[r] See *post*, p. 290.

[s] May, Const. Hist. v. 1, p. 135. For the origin of the terms 'Conservative' (which has been erroneously attributed to Sir R. Peel) and 'Liberal,' by which the rival political parties are now designated, instead of being styled Whigs and Tories, as of yore, see Speeches, &c., of Edward, Lord Lytton, edited by his son, v. 1, p. lxxix.

CHAPTER IV.

ANNALS OF THE ADMINISTRATIONS OF ENGLAND, FROM 1782 TO 1873.

It is proposed in the following chapter to give a brief account of the circumstances attending the appointment, resignation, or dismissal, of the several administrations of England, from 1782 to 1873; together with a mention of the various constitutional questions, illustrative of ministerial responsibility, which arose during their term of office, and which have not been specially noticed in other parts of this treatise.

The year 1782 a constitutional epoch.

In selecting the year 1782 as our starting-point, we do so because it is the date of an important epoch in constitutional history. It marks the first introduction of the practice, since universally recognised, of the simultaneous change of the whole ministry upon the enforced retirement of the cabinet.[a] Prior to that time, there had been frequent instances of partial alterations in the cabinet, with a view to conciliate the favour of Parliament, but it was not until the downfall of Lord North's administration, in 1782, in consequence of its having lost the confidence of the House of Commons, that the necessity for a complete change in the ministry, under such circumstances, was freely acknowledged. Moreover, previous to this occasion, there had been but one example—that of Sir Robert Walpole, in 1741—of the retirement of a prime minister on account of a defeat in the House of Commons.[b]

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[a] See *post*, v. 2.

[b] *Ib.*

1. *Rockingham Administration.—March* 1782.

In March 1782, upon the resignation of the North administration, the Marquis of Rockingham was appointed First Lord of the Treasury. The history of the formation of this ministry is remarkable.[c] The North administration, after a successful career of twelve years, came to an end in consequence of its growing unpopularity in the House of Commons. The House had passed resolutions denouncing the great and increasing influence of the crown, and in favour of peace with the revolted American colonies. George III. was strongly averse to the recognition of American independence; and Lord North, though personally inclined towards conciliation, is said to have remained in office 'to carry into effect the personal wishes of the sovereign, which he preferred to the welfare of the state.'[d] But the House of Commons had become impatient at the continuance of the war, and it was evident that the war ministry were losing ground. A direct vote of want of confidence had indeed been negatived by a bare majority of nine; but Lord Surrey had given notice of a similar motion, for March 20, 1782, which it was anticipated would pass. With some difficulty Lord North induced the king to forestall this defeat, by accepting the resignation of ministers; an event which was communicated to the House on the day the debate was to have begun.[e] The king made several attempts to induce the Whig party to take office upon his own terms, but without success. He was at length obliged to authorise Lord Rockingham to form an administration upon the basis of the independence of America, and a curtailment of the influence of the crown. The list of the new cabinet, before being 1782.

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[c] See Lewis, Adminis. p. 25. Fitzmaurice, Life of Ld. Shelburne, v. 3, p. 129.

[d] Russell's Mem. of Fox, v. 1, p. 247.

[e] See *post*, v. 2.

1782. submitted to the king, received the approval of the leading Whigs. The king refused to see his new premier until he was actually in office, and conducted the ministerial negotiations through Lord Shelburne, who was appointed Home Secretary, and at whose suggestion Mr. Dunning (with the title of Lord Ashburton) was added to the cabinet, without previous communication with Lord Rockingham. The contest in which the North administration had been overthrown was a struggle of the king's personal will, backed by the influence of the crown, against the independent portion of the House of Commons. When the result was known, Fox openly treated it as a victory of the Commons over the king; declaring in his place in Parliament that the new ministers must remember that they owed their situations to the House. The king, though fully sensible that he had sustained defeat, was prudent enough to tolerate for a time a ministry composed for the most part of men whom he regarded as his personal enemies. The only member of the late ministry who remained in office was Lord Chancellor Thurlow, who retained his place at the express desire of the king, and who showed his independence of his new colleagues by opposing them in council.[f] But the new ministry were very short-lived; within four months of their appointment they were dissolved, by the death, on July 1, of the premier, Lord Rockingham.[g]

2. *Shelburne Administration.—July* 1782.

Two days afterwards, Mr. Secretary Fox advised the king to appoint some member of the Rockingham party as premier; but his Majesty refused, and gave the appointment to Lord Shelburne, whereupon Fox, Burke,

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[f] See *post*, v. 2. [g] Lewis, Adminis. p. 29.

Sheridan, and others of their friends, resigned office. 1782.
Nevertheless the new ministry was decidedly Whig, and professed the same principles as their predecessors. Mr. Pitt, the new Chancellor of the Exchequer, and leader of the House of Commons, was, at this time, accounted a good Whig Fox, after his resignation, continued in opposition, and soon afterwards entered into his famous Coalition with Lord North, which immediately placed the government in a very perilous position. The comparative strength of parties in the House of Commons was estimated to afford the ministry 140 votes, Lord North 120, Fox 90, and the residue uncertain. Preliminaries of peace, which recognised the independence of the American colonies, had been agreed upon by the government, and presented to Parliament. It was decided that 1783
their acceptance should be a test question between the new Coalition and the ministry. Accordingly, a motion of censure upon the terms of the preliminaries was proposed by Lord J. Cavendish, on February 21, and agreed to by the House of Commons, by 207 to 190 votes. Three days afterwards, the ministry resigned. Owing to the difficulties of the situation, there was a ministerial interregnum, which extended to the beginning of April. In the interim, the king made an unsuccessful attempt to induce Mr. Pitt to form a government; and the Commons, on March 24, passed an address, praying his Majesty to form a strong and united administration, which was graciously received, and responded to through Earl Ludlow.[h] On March 31, a motion was made for a further address upon the subject; but the House being of opinion that it was premature to interpose again with their advice so soon after his Majesty's gracious reply to their former address, the motion was withdrawn.[i]

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[h] Adolphus, Geo. III. v. 3, pp. 159, 464, 466. And see Fitzmaurice, Life of Ld. Shelburne, v. 3, cc. iv., v.

[i] Parl. Hist. v. 23, pp. 687-700.

3. *Duke of Portland's First Administration. April* 1783.

1783 At length, on April 2, 1783, the celebrated 'Coalition Ministry' was formed, under the nominal presidency of the Duke of Portland. It included Lord North and Mr. Fox, heretofore such bitter and, as was supposed, irreconcilable opponents. The other cabinet offices were chiefly filled by followers of Fox, who was himself the virtual prime minister.[j] The Coalition was unpopular with the nation on public grounds, and was vehemently assailed both in and out of Parliament. Lord North and his friends attempted to vindicate their conduct by arguments of expediency.[k] The king himself resented the Coalition for personal reasons. He had long entertained a great aversion to Fox, which was aggravated by the friendship that had sprung up between Fox and the Prince of Wales. Lord North was formerly a favourite with the king, but he now looked upon him as a deserter to the enemy's camp. He therefore resolved to take the earliest opportunity of ridding himself of his obnoxious advisers. Nothing remarkable occurred during the remainder of the session in which the ministry was appointed. But, on the reassembling of Parliament, in the autumn of 1783, the king's speech announced that the treaties of peace had been signed. Mr. Pitt, as leader of the Opposition, reminded ministers that these treaties were substantially identical with the preliminary articles, upon which they had turned out their predecessors in office.[l] Early in the session, Mr. Secretary Fox introduced his famous India Bill. Its principal feature was that it vested the

[j] Fitzmaurice, Life of Ld. Shelburne, v. 3, cc. vii., viii. Russell's Mem. of Fox, v. 2, p. 95.

[k] For the principal arguments for and against the Coalition, see Adolphus, v. 3, pp. 460–464; Lewis, Adminis. p. 60.

[l] Parl. Hist. v. 23, p. 1140.

government of India, for four years, in a commission of seven persons, named in the Bill, and not removable by the crown, except upon an address from the two Houses of Parliament. Pitt denounced the plan as dangerous to the constitution, and a violation of the chartered rights of the East India Company.

A protest—signed by Lord Rockingham, the Duke of Portland, Lord Fitzwilliam, and other peers to a Bill for the management of the East India Company's affairs, in 1773, contained the following passage, which, from its striking applicability to Mr. Fox's Bill, was much quoted at the time:—'The election of executive officers in Parliament is plainly unconstitutional, and an example of the most pernicious kind, productive of intrigue and faction, and calculated for extending a corrupt influence in the crown. It frees ministers from responsibility, while it leaves them all the effect of patronage.'[m]

But though the measure was unpopular in the country, the Coalition were sufficiently strong to carry it through the House of Commons without difficulty. In the Lords it obtained a different reception. Lord Temple, at the instigation of the king himself,[n] brought about its rejection, in that House, on December 17, by 95 to 76 votes. On the following day the king dismissed the ministry, and again appealed to Pitt to assume the reins of government.

4. *Mr. Pitt's First Administration.—December* 1783.

On December 19, 1783, Mr. Pitt's first administration was formed.[o] Earl Temple, who had been appointed a Secretary of State, advocated an immediate dissolution of Parliament. But Pitt would not agree to this, being of opinion that the time had not yet come when the country could be appealed to with success. He 'wisely determined to give the public feeling time 1783.

[m] See Adolphus, v. 4, p. 59, *n.*; Lords' Journals, June 19, 1773. Ed. Rev. v. 107, p. 578.

[n] See *ante*, p. 117.

[o] Fitzmaurice, Life of Ld. Shelburne, v. 3, p. 406.

1783. to gather strength,'[p] whereupon Temple resigned, on the 22nd instant, leaving the youthful premier to bear the brunt of the severest contest ever waged in Parliament. For though Pitt possessed the unlimited confidence of the king, and the support of the House of Lords, yet a powerful majority of the House of Commons was arrayed against him. His cabinet consisted of seven persons, all of whom, save himself, were peers.[q] His only assistant in the House of Commons was his friend Dundas. He was assailed at once by every imaginable device of a hostile Opposition—votes of want of confidence, censures upon the government, obstructions and defeats in every shape.[r] But he stood firm; and though frequently urged by his supporters, and even by the king himself, to dissolve Parliament, he refrained from doing so until he considered that the country was prepared to sustain him. It was not until
1784. March 24 that the prorogation took place, to be followed by an immediate dissolution. But such was the inveteracy of the Opposition that Pitt was obliged to prorogue before the passing of an Appropriation Act. Upon the reassembling of Parliament, however, it appeared that the amount of unauthorised expenditure had been very small, so that no objection was urged, or indemnity sought for, in regard to the same.[s] The sense of the country, in reference to the great issues involved in the contest between Pitt and the Coalition, had been expressed at the time by numerous addresses to the king. It was afterwards unmistakably pronounced by the return of a House of Commons which gave a triumphant support to the new administration. Above 160 members lost their seats at this election, nearly

[p] T. B. Macaulay, Life of Pitt, in Ency. Brit.

[q] Stanhope's Pitt, v. 1, p. 165.

[r] See *ante*, p. 119. For a list of the defeats of Pitt, in the House of Commons, from his acceptance of office, in December 1783, to the dissolution of Parliament, in March 1784, see Mir. of Parl., 1841, pp. 1953, 1954.

[s] 3 Hats. Prec. 208.

all of whom were Oppositionists. Upon the meeting of Parliament, an amendment was moved to the address in answer to the royal speech, to rescind the paragraph which expressed approval of the late dissolution; but it was negatived by a majority of more than two to one.[t] In the course of this session, Pitt introduced his India Bill, which was carried by a majority of 271 to 60. It created a Ministerial Board of Control for the affairs of India, to act in concert with the Court of Directors of the East India Company. This system of 'double government' continued in operation until after the great mutiny of 1857, when, by the Act 21 and 22 Vict. c. 106, the government of India was assumed by the queen herself, acting through a responsible Secretary of State. Mr. Pitt's majority in the House of Commons continued unshaken during the whole period of his administration, which lasted upwards of seventeen years. The unpatriotic conduct of Fox and his followers in regard to the French Revolution, and consequent war between England and France, contributed largely to the popularity of the government.[u] It so alarmed and disgusted the aristocratic section of the Whig party as to induce them in 1792 to desire a Coalition with the government. For a time Fox himself was not unfavourable to union, but jealousy of Pitt would not suffer him to take a subordinate place in a ministry headed by his great rival. So he drifted off into more violent opposition, and openly avowed republican ideas. Whereupon the Duke of Portland, with other eminent Whig leaders, agreed, in the summer of 1794, to coalesce with Pitt. This Coalition was publicly ratified by the introduction of five new cabinet ministers from the ranks of the Opposition to the Treasury Bench.[v] The 1784

[t] Knight, v. 7, pp. 140-143; Adolphus, v. 4, pp. 103, 117.

[u] See Lewis, Adminis. pp. 137, 217.

[v] Life and Letters of first Earl of Minto, v. 2, cc. i.-iv., xi. Jesse, Life of George III. v. 3, pp. 183-194.

course pursued by Fox reduced his party so low that, near the end of the century, it was jocularly estimated that the entire Opposition could have been held in one hackney-coach.[w]

The retirement of Pitt's administration took place in
1801. 1801. It was not purely voluntary, but was brought about by differences with the king in regard to the Roman Catholic claims. Mr. Pitt, in order to facilitate the passing of the legislative Union between Great Britain and Ireland, had intimated his readiness to propose the removal of the Roman Catholic disabilities from office-holders and members of Parliament. A proposition to this effect was discussed in the cabinet for about six months previous to its being communicated to the king, notwithstanding the known repugnance of his Majesty to any legislation upon the subject. When the desire of his ministers to submit to Parliament some measure of relief became known to the king, by a letter from Mr. Pitt, dated January 31, 1801, informing him that, unless the royal sanction thereto was granted, he must resign his office, the king at once declined to discuss the proposition. He nevertheless urged Mr. Pitt not to leave his service. But Pitt would not yield. So the king declared that he should form a new administration.[x] Canning, who was in office at the time, is said to have strongly advised Pitt not to give way on this occasion; for that, for three years back, so many concessions, as he termed them, had been made, and so many important measures overruled, from the king's opposition to them, that government had been weakened exceedingly; and if in this instance a stand was not made, Pitt would retain only a nominal

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[w] Campbell's Lives of the Chanc. v. 5, p. 611.

[x] See *post*, v. 2. It has been surmised that while the Catholic question was the ostensible ground for Pitt's resignation, he was largely influenced by other motives. See Massey's George III. v. 4, pp. 537–559. Lewis, Adminis. pp. 144, 207, 270, 282. But see Life of Earl Minto, v. 3, c. ix.

power, while the reality would pass into the hands of those who influenced the king's mind and opinion out of sight.[y] The causes of this change of ministry were very briefly stated to Parliament; and Mr. Pitt's explanations were neither full nor satisfactory.[z] This reticence was evidently resorted to in order to avoid bringing the royal name too prominently forward in connection with these events;[a] but it naturally gave rise to much misapprehension at the time, and it was not until after the death of Pitt that the whole truth transpired.[b] 1801.

5. *Addington Administration.*—1801.

Mr. Addington, who at that time was speaker of the House of Commons, was empowered by the king to form a cabinet as soon as the correspondence between his Majesty and Mr. Pitt had terminated. But before the outgoing ministers had their audiences to deliver up their seals, the king, in consequence of the agitation produced by the change of ministry, was seized with a return of his mental malady. He was unable to attend to business until about March 10, when he was sufficiently recovered to sign documents and give audiences to some of his ministers. Pending the completion of the new arrangements which were thus unavoidably delayed, Mr. Pitt continued to conduct the public business in the House of Commons, performing the official duties of the Chancellor of the Exchequer, although he had formally resigned that office on February 5.[c] 1801.

But his resignation was not legally complete until the appoint-

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[y] Malmesbury, Diaries, v. 4, p. 4.
[z] Parl. Hist. v. 35, pp. 945, 967, 1112.
[a] *Ib.* p. 1121.
[b] Parl. Deb. v. 9, p. 232; Quar Rev. v. 112, p. 369.
[c] Parl. Hist. v. 35, p. 959.

1801. ment of his successor; he was therefore competent to transact official business.[d]

The king did not receive the seals of office from Mr. Pitt until March 14; and he gave them to Mr. Addington on that day. In order to facilitate the new arrangements, Mr. Addington vacated his seat in Parliament, by accepting the Chiltern Hundreds, on February 19; but owing to the king's illness it became impossible to confer upon him his ministerial office previous to his re-election for Devizes. Accordingly, on March 16, a new writ for Devizes was again ordered, upon the acceptance by Mr. Addington of the offices of First Lord of the Treasury and Chancellor of the Exchequer. The result of these delays was that it was March 23 before Mr. Addington again took his seat in the House.[e]

On February 16, he moved the House into Committee of Supply, for the purpose of enabling him to open the budget. The motion was opposed on the ground that 'the responsibility of the former ministers was at an end,' and the incoming ministers were as yet absent from their places; and that therefore 'further proceedings on the estimates should be delayed until the new ministers, by taking their seats, have assumed responsibility.' This was resisted by Mr. Pitt, who said that 'when there arises a change among his Majesty's ministers, it must be left to his Majesty to determine when the new arrangements shall be formed; and it is contrary to the spirit of the constitution for the House to assume any right of determination on a subject of this kind.' He also contended that the perilous state of the country, in its foreign relations, demanded that there should be no delay in granting the supplies, and 'that every department of the public service should be accelerated to the greatest possible degree.' If the new ministers were not responsible for framing the estimates (a responsibility from which he himself would not shrink), they would be undoubtedly responsible for expending the

[d] See Hats. Prec. v. 2, p. 394; Parl. Deb. v. 16, p. 735.

[e] Sidmouth's Life, by Pellew, v. 1, pp. 294, 345. This wholesome practice as to the competency of retiring ministers to conduct the ordinary business of the crown in Parliament, see *post*, v. 2.

money. He claimed, moreover, that there was no ground to 'call for the interference of the House, either from a change of measures or of men.' Until the appointments of the new ministers 'were publicly notified, it was inconsistent with the constitution to come to any determination. In no previous instance had it been attempted to be denied, that, according to the constitution, his Majesty had the sole right of nominating his ministers, and that the House had no right to form any resolution till their conduct came to be judged of by the acts of their administration. Even in 1784 this general principle had never been attempted to be denied in the abstract.'[f] Adverting to his having refrained from entering into explanations as to the cause of his own resignation, Mr. Pitt observed that it appeared to him to be a new and not very constitutional doctrine, that 'a man must not, in compliance with the dictates of his conscience, retire from office without being bound to give to this House, and to the public, an account of all the circumstances that weigh in his mind and influence his conduct. Where this system of duty is established, I know not.'[g] The motion for going into Committee of Supply was then put and agreed to, without a division. On February 18, Mr. Pitt introduced the budget, which excited no opposition. The House continued to sit, and to debate various public political questions up to March 17, when the new administration were formally inducted into office. But even then, owing to the unsettled condition of the king's mind, a further delay of several weeks took place before the ministry was entirely completed.[h] 1801.

Mr. Addington's administration was constructed

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[f] Parl. Hist. v. 35, pp. 960–962.

[g] *Ib.* p. 969. See also p. 1121, for further remarks from Mr. Pitt on this point, showing that the reciprocal duty between a sovereign and his ministers may sometimes render it impossible to afford full explanations to Parliament of the causes which have led to the resignation or dismissal of a ministry.

[h] Adolphus, v. 7, pp. 450, 458; Lewis, Adminis. p. 210.

1801 upon an avowedly 'anti-Catholic' basis. It had been formed, at the outset, 'with the concurrence of Mr. Pitt, who wished all his private and personal friends to remain in office.'[i] It began its career upon March 14, 1801, the day when the king transferred the seals of office from the outgoing to the incoming premier. Ministers had no sooner taken their seats in the House of Commons when, on March 25, Mr. Grey moved for a committee of the whole to consider the state of the nation. His speech was an elaborate attack upon the conduct and policy of the preceding ministry, and a condemnation of the existing one, because of their presumed incompetency to fill their places properly; and because it had been avowed, on their behalf, that their principles were similar to those of their predecessors in office. Mr. Pitt defended himself and his late colleagues, and claimed for the new ministry, at the outset of their career, 'a constitutional confidence;' in other words, 'that, unless some good reason were assigned to the contrary, the House was bound, by the best principles of policy, as well as by the true spirit of the constitution of this country, to wait to see the conduct of the ministers of the crown, before they should withhold their confidence.'[j] The new premier expressed himself to the same effect, saying, 'In what degree the confidence of the House might be supposed to extend to his Majesty's present ministers, it was not for him to conjecture. They only asked, however, for that portion of it which should be constitutionally reposed in persons duly appointed by his Majesty, unless it was precluded by their antecedent conduct and characters.'[k] The House then divided on Mr. Grey's motion, which was negatived by a large majority. A similar motion, proposed to the House of Lords on March 20, met with a

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[i] Rose, Diary, v. 1, p. 292. [j] Parl. Hist. v. 35, pp. 962, 1115.
[k] *Ib.* p. 1166.

similar fate. Nevertheless it was evident that the new administration did not possess the confidence of either House of Parliament to the same extent as their predecessors. Conscious of this, Mr. Addington, in March 1803, made overtures to Mr. Pitt, offering him the selection of a new premier, if he would consent to serve with himself in the capacity of Secretary of State. Pitt would not listen to this arrangement. He was then offered the premiership, on condition that there should be no extensive changes in other offices. But neither would he agree to this, although he and his friends were tired of bolstering up a feeble government.[1] 1803.

Commenting on these transactions, Sir G. C. Lewis pointedly remarks:—'It appears that the king's consent to the negotiation, however necessary an element in the business, had never been procured by Addington; so that, in fact, no distinct offer, by competent authority, was made to Pitt. Addington assumed to act as plenipotentiary, but had not full powers to treat. . . . It is remarkable that the latter should have ventured to make the offer, or that the former should have been willing to entertain it, without the king's express authority being previously obtained. It was not a mere question of changing a cabinet office, as to which a prime minister might properly make a preliminary arrangement, subject to the king's confirmation. It was practically a negotiation for a complete alteration of the character of the government; and the whole discussion proceeded on the assumption that Addington and Pitt were between them to settle who was to be the new prime minister.' After he had received Pitt's final answer, Addington took an opportunity to mention the matter to the king. But he represented Pitt's conduct in such an unfavourable light, as to excite the king's anger; and when, shortly afterwards, he gave the king copies of the correspondence, his Majesty refused to read the letters, and remarked that 'it was foolish business, which was begun ill, conducted ill, and terminated ill.'[m]

Accordingly, Addington continued at the helm for another year, when it became notorious that he had lost his hold upon both Houses. In the Commons, ministerial majorities on important divisions were

[1] See *post*, v. 2. And Lewis, Adminis. pp. 223-229, 272

[m] *Ib.* pp. 229, 272.

gradually reduced; while in the minority were found most of the leading men of all parties, including Pitt, Fox,
1804. and Sir Francis Burdett. On April 22, 1804, Mr. Pitt wrote to the king, intimating that he could no longer refrain from direct opposition to the ministerial measures; a determination which he immediately carried out, by opposing, on April 25, the government plan for military defence, and developing a scheme of his own. On a division, ministers were sustained by a small majority. But, taking into account the gradual decline of his own numbers, and the increasing strength of his opponents, Mr. Addington deemed it expedient to resign. Upon his informing the king of this resolution, there was an immediate resumption of intercourse between his Majesty and Mr. Pitt. At first, communications were conducted through Lord Eldon (the Lord Chancellor);[n] but, on May 6, the king himself wrote to Mr. Pitt, requiring of him, as a necessary preliminary to his return to office, that he would never agitate or support Roman Catholic emancipation, or the repeal of the Test Act; and that in the new ministry (wherein the king hoped Mr. Pitt would include as many of his Majesty's present servants as possible) Mr. Fox should be excluded. Mr. Pitt had previously determined that he would not again press the Catholic claims upon his royal master, whether he should be in or out of office. This resolution had been made known to the king so long ago as March 1801; so that, while he contrived on this occasion to evade giving the formal pledge which his Majesty required, he was nevertheless able to satisfy his sovereign as to the policy he would advocate in the event of his return to power.[o] Although yielding to

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[n] Lord Eldon's share in these transactions gave rise to an imputation that he intrigued for the return of Pitt to power, and for his own retention in office; but this has not been satisfactorily established. See Lewis, Adminis. pp. 243, 279; Quar. Rev. v. 112, p. 375.

[o] Knight, v. 7, p. 431; Parl. Deb. v. 9, p. 254; Stanhope's Pitt, v. 3, p. 310; Lewis, Adminis. pp. 223-244.

the necessity of the case, in recalling Mr. Pitt, the king was reluctant to part with Mr. Addington. Before taking the final step, he offered his faithful premier a dissolution of Parliament, if he thought it would insure the stability of his administration. But this was declined; for, while Mr. Addington did not doubt his ability to restore and retain his ascendency in the House of Commons, he felt that he could not command a majority in the Lords without resorting to the extreme and dangerous measure of creating a batch of peers.[p] He therefore resigned office on May 10, 1804.

6. *Mr. Pitt's Second Administration.*—1804.

Mr. Pitt, when invited to communicate with the king in regard to the existing state of public affairs, sent his Majesty a letter, on May 2, through Lord Eldon, containing a plan for the formation of a new government, which should comprehend the leaders of all political parties. The king, who was greatly troubled at this time by the resignation of his favourite Addington, and not at all willing to re-admit Pitt to office, gave a discouraging reply. But on May 7, after Pitt had satisfied the king that he would no longer agitate him by renewing his advocacy of the Roman Catholic claims, he had an audience of his Majesty, and succeeded, with some difficulty, in obtaining leave to treat with Lord Grenville and his friends, and with the friends of Mr. Fox; but the king positively refused to admit Mr. Fox himself into the cabinet, though pressed to receive him by Pitt. The Grenville party, however, declined to accept office without Fox, and Pitt was compelled to make other arrangements. The new cabinet consisted principally of peers; Lord Castlereagh being the only one, besides Pitt, who was a member of the 1804.

[p] Adolphus, v. 7, p. 708. Life of Earl of Minto, v. 3, c. xiii.

House of Commons.[q] Pitt took his seat, after his re-election, on May 18, 1804. But he found himself less strong in the confidence of the House than heretofore. A severe and mortifying trial overtook him in the following session. His friend and colleague, Lord Melville (First Lord of the Admiralty), was accused, in the Tenth Report of the Commissioners of Naval Inquiry, with a misappropriation of public money when he held the office of Treasurer of the Navy. A motion, inculpating him of this offence, was carried in the House of Commons by the Speaker's casting vote, notwithstanding the opposition of Pitt. A few days afterwards, Mr. Pitt informed the House that Lord Melville had resigned his ministerial office; and that he had advised the king to erase his name from the list of the privy council.[r]

Articles of impeachment were exhibited against Lord Melville; and he was tried by the House of Lords, but pronounced not guilty. He was then restored to his place in the Privy Council; but never afterwards held office, though invited to do so by the Portland administration.[s]

1805. In the autumn of 1805, Pitt again endeavoured to overcome the king's objections to Mr. Fox, but without success; and he was obliged to abandon the idea of meeting Parliament with any accession of administrative or parliamentary strength.[t] But it was fated that he should never appear in the House of Commons again. His health, which had been long failing, suddenly gave way, and he died on January 23, 1806—being the twenty-fifth anniversary of the day on which he first took his seat in parliament—at the early age of forty-eight. After Mr. Pitt's decease, the junction of political parties, which he had latterly striven to bring about, though frustrated by the king's refusal to admit Mr. Fox into the cabinet, was accomplished. The critical

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[q] Lewis, Adminis. p. 246.
[r] *Ib.* pp. 257, 278.
[s] *Ib.* p. 297.
[t] *Ib.* p. 259.

state of our continental relations induced the leading politicians to sink minor differences in a general union, and to agree to the formation of a Coalition government on a wide and comprehensive basis.[u]

7. *Lord Grenville's Administration.*—1806.

After an ineffectual attempt on the part of the king to induce Lord Hawkesbury (the Home Secretary) to form a new ministry, which should represent as nearly as possible the principles of the late cabinet, his Majesty was induced, by the retiring ministers, to send, on January 26, for Lord Grenville, and empower him to form a comprehensive administration, which, it was understood, should include Mr. Fox. From the eminent statesmen of which this ministry was composed, it became known as 'All the Talents.' Fox was appointed Foreign Secretary, and leader of the House of Commons. The only terms which the new ministers made with the king related to the management of the army, a point which has already engaged our attention.[v] Upon the question of the Roman Catholic claims the ministry were divided, and had no declared policy. With a view to strengthen their political position, Lord Ellenborough, the Chief Justice of the King's Bench, had been admitted to a seat in the cabinet. This arrangement was open to grave constitutional objections, and became the subject of animadversion in both Houses of Parliament. Although the appointment was successfully defended at the time, it was generally condemned by public opinion, and no similar appointment has since been made.[w] On September 13, 1806, Mr. Fox died, an event which weakened the ministry in Parliament very 1806.

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[u] Lewis, Adminis. p. 207.

[v] *Ib.* p. 287. And see *ante*, p. 121.

[w] See a full discussion of this question in v. 2.

1806. materially. But the changes of office proposed by Lord Grenville, and assented to by the king, preserved the balance of power in the Coalition government.[x] In the following month ministers suddenly determined upon a dissolution of Parliament with a view to strengthen their hands in the prosecution of the war with France.[y] In the new House of Commons they were able to command a large majority. Nevertheless, their downfall was near at hand. True to their avowed principles when in opposition, they drafted a Bill to remove certain civil disabilities of Roman Catholics and Dissenters who held commissions in the army or navy. They sought and obtained permission from his Majesty to submit this measure to Parliament. But the king's consent was given with great reluctance; and, as it afterwards proved, under a misapprehension as to the extent of relief proposed to be granted. This misapprehension was shared in by some members of the cabinet itself. When the ministerial intentions were fully explained, one of their number (Lord Sidmouth) tendered his resignation, and the king declared his decided opposition to the Bill; which, meanwhile, had been introduced, and read a first time in the House of Commons. The ministry anxiously disavowed any intention to deceive their royal master, or to go beyond the authority they presumed he had given them to initiate legislation on this subject; and the king himself
1807. fully acquitted them of any such design. In order to satisfy his Majesty's scruples, the ministry, on March 15, passed a cabinet minute, which they communicated to the king, and in which they agreed to withdraw the Bill, but claimed the right of publicly expressing their individual sentiments on the subject, and of proposing at any future time such measures for the relief of their Roman Catholic fellow-subjects as they might deem to

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[x] See Lewis, Adminis. p. 293.
[y] Bulwer's Palmerston, v. 1, p. 52. Parl. Deb. v. 8, p. 27.

be called for by the condition of Ireland. The king resented this declaration, and insisted that it should be withdrawn. But, not content with this, he endeavoured to exact from the ministry a pledge that they would never, under any circumstances, propose in cabinet any measure of concession to the Roman Catholics, or in relation thereto. They very properly refused to give any such assurance; whereupon, on March 24, they received their dismissal.[z] On the day previous, Lord Howick (Foreign Secretary) informed the House of Commons that, although ministers had not received the royal commands to deliver up the seals of office, the king had thought proper to send for persons not employed as his servants, and was engaged in arrangements for a new administration.[a] On the 25th instant, after the dismissal, his lordship gave notice that as, on the morrow, the House would be moved to adjourn for several days, he would take the opportunity to give explanations respecting the change of ministry. A similar notice was given by the late premier in the House of Lords. At the time appointed, the explanations were made, and a short debate thereupon arose in both Houses. In the course of the debate, notice was given (in each House) of intended motions in regard to the circumstances attending the dismissal of the ministry.[b] Parliament then adjourned until April 8.

8. *Duke of Portland's Second Administration.*—1807.

Meanwhile the Duke of Portland, who had been charged by the king to form a new ministry, appears, on March 25, 1807, to have succeeded in that undertaking; although no formal announcement of his success seems to have been communicated to Parliament.[c] 1807.

[z] Bulwer's Palmerston, v. 1, pp. 62–76; Walpole's Perceval, v. 1, pp. 223–233. Parl. Deb. v. 9, pp. 266–276.

[a] Parl. Deb. v. 9, p. 174.

[b] *Ib.* pp. 260, 270.

[c] *Ib.* p. 187. For an account of the new ministerial arrangements, see Lewis, Adminis. p. 296.

1807. But, on the following day, new writs were moved for in the Commons, on behalf of the members of the incoming administration who had seats in that House. On April 9, the new ministers being present, Mr. Brand moved to resolve, 'That it is contrary to the first duties of the confidential servants of the crown to restrain themselves by any pledge, expressed or implied, from offering to the king any advice which the course of circumstances may render necessary for the welfare and security of any part of the empire.' There was a general acquiescence by members in this doctrine, but it was objected to as being 'an abstract proposition,' and therefore inexpedient and inconvenient for the House directly to affirm. Accordingly an amendment, that the other orders of the day be read, was proposed on behalf of ministers, and agreed to on division. During the debate, Mr. Perceval (the Chancellor of the Exchequer) stated that 'to the best of his knowledge and belief, the king had no adviser on the point of requesting the pledge;'[d] a remark which called forth emphatic declarations 'that there was not a moment in the king's life, from his accession to his demise, when there was not a person constitutionally responsible for his actions;' that it was 'of the greatest importance to his Majesty that the doctrine of responsible advisers should be strictly maintained;' and that, although the king, in dismissing a ministry, in the exercise of his undoubted prerogative, might appear to be acting without advice, yet that the incoming ministry did themselves assume the responsibility of the dismissal of their predecessors. The king being irresponsible by law, if the ministers should also claim, for whatever reason, to be absolved from responsibility,

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[d] Parl. Deb. v. 9, p. 328. He admitted, however, that he 'approved of what had been done, and was ready to be responsible for it' (p. 316); a declaration in which Mr. Secretary Canning expressed his full concurrence (p. 345). But a few days afterwards Mr. Perceval reiterated his denial of the doctrine, that ministers who accepted office were legally responsible for the change of government (p. 473).

there would be no security for the people against the evils of bad government.[e] In the House of Lords, on April 13, the Marquis of Stafford made a motion similar in effect to that submitted to the House of Commons by Mr. Brand, except that it was prefaced by a preamble, expressive of regret at the changes which had taken place in his Majesty's councils. It was met on behalf of ministers by a motion to adjourn, which was carried. On April 15 Mr. Lyttleton moved, in the House of Commons, 'That this House, considering a firm and efficient administration as indispensably necessary, in the present important crisis of public affairs, has seen, with the deepest regret, the late change in his Majesty's councils.' The friends of the motion acknowledged the right of the king to choose his own advisers, but insisted that the House had the privilege of giving its opinion on the fitness of the persons selected to fill the situations to which they were appointed. But the House were not prepared to limit the exercise of the prerogative so far as to refuse a fair trial to the king's ministers. The debate was in substance a repetition of the former discussion: but it was signalised by an able speech from Sir William Grant (the Master of the Rolls), in which he commented severely on the attempt of the late ministers to expose the king to odium because he had thought fit to dismiss them. He remarked that many ministers had been dismissed from office without any cause assigned, but that never until now had any one come to Parliament to complain of his sovereign. 'Lord Somers was removed without a shadow of complaint; did he demand an investigation of the cause? When Godolphin's administration was removed by Queen Anne, did they complain to Parliament? In 1757, the dismissal of Mr. Pitt and Mr. Legge produced a great ferment; but was anything said about that dismissal in Parliament? If a

1807.

Parl. Deb. v. 9, pp. 285, 329, 335, 362, 380.

minister were to secure himself the right of enquiry into the causes of his removal, he would approximate his situation to that of a judge, or any other officer, for life. Of a change in administration, Parliament had no constitutional knowledge, and on such change could found no enquiry.' An amendment, on behalf of ministers, to pass to the orders of the day, was then put and carried.[f] Notwithstanding that by these votes the new government was fully sustained by majorities in Parliament, advantage was taken of the popular feeling in favour of the king's act in dismissing his ministers upon 'Protestant grounds,' to dissolve Parliament at the end of its first session.[g] The main issue raised by this appeal to the country was the propriety of the conduct of his Majesty in changing his advisers; proceeding, as it did, from a conscientious conviction that a due regard for the maintenance of the principle of Protestantism in the constitution demanded such a proceeding. This was distinctly enunciated in the royal speech at the prorogation of Parliament.[h] The elections went in favour of ministers, and their majority was largely increased in the new House of Commons. Upon the meeting of Parliament, amendments to the address, in answer to the speech from the throne, were proposed in both Houses, condemning the dissolution, as having been resorted to upon 'groundless and injurious pretences;' but they were negatived by large majorities.[i] The Duke of Portland, we have seen, was the nominal head of this ministry; but he rarely superintended anything, or interfered with the arrangements of his colleagues, so that for a time the administration became, once more, a

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[f] Parl. Deb. v. 9, pp. 472-474. And see Speaker Abbott's remarks in Colchester Diary, v. 2, p. 119.

[g] Yonge, Life of Ld. Liverpool, v. 1, p. 237.

[h] *Ib.* p. 552. Mr. Canning and Ld. Castlereagh laid themselves open to attack for sanctioning the 'No Popery' cry on this occasion; notwithstanding their own convictions in favour of Roman Catholic emancipation. See Lewis, Adminis. p. 302.

[i] Parl. Deb. v. 9, pp. 583-658.

mere government by departments.[j] Its most influential member was Mr. Spencer Perceval, the Chancellor of the Exchequer.

9. *Mr. Perceval's Administration.*—1809.

On October 30, 1809, the Duke of Portland died. After an ineffectual attempt to induce Lord Grenville to form an extended and combined administration, he was succeeded by Mr. Perceval as premier.[k] 1809.

Mr. Perceval held the two offices of First Lord of the Treasury and Chancellor of the Exchequer in conjunction. The Chancellor of the Exchequership had been offered to Mr. Vansittart, Mr. Rose, Mr. Long, Mr. Milnes, and to Lord Palmerston, but declined by each.[l]

The new cabinet consisted of ten persons, seven of whom were peers. At first it was beset with difficulties, from intrigue and a formidable opposition in the House of Commons, but Perceval's dauntless courage, high personal character, and ready resources, soon turned the scale in his favour, and won for him the admiration of his political opponents, and the favour of the prince regent, who had previously regarded him as his bitterest enemy.[m]

Contrary to general expectation, the Prince of Wales, upon his assumption of the regency, in February 1811, addressed a letter to Mr. Perceval, stating that it was not his intention to remove the existing ministers from office. This step, he added, was prompted exclusively by filial duty and affection.[n] A year afterwards, when the restrictions on the regent expired, he still continued Mr. Perceval as minister. He did, indeed, invite the co-operation of Lords Grey and Grenville, but they could not consent to form a junction with their political opponents.[o] The death of George III., which

[j] Walpole, Life of Perceval, v. 1, p. 238.
[k] *Ib.* v. 2, c. i. Lewis, Adminis. p. 316.
[l] *Ib.* v. 2, pp. 47–51.
[m] *Ib.* v. 2, cc. v., vi., vii.
[n] *Ib.* v. 2, pp. 172, 184, 194.
[o] *Ib.* p. 264. Lewis, Adminis. pp. 329–334.

took place on January 29, 1820, was not followed by any important political consequence.

The Marquis Wellesley was appointed Foreign Secretary in the new administration, and continued to hold this
1812. office until February 19, 1812, when he resigned, because his 'general opinions for a long time past, on various important questions, had not sufficient weight in the cabinet to justify' his remaining in the government. He had chiefly objected to the narrow and imperfect scale on which the war in Spain had been conducted. His views on this head had been always overborne in council by Mr. Perceval. In announcing his intention to retire from office, he declared that he should have no objection, in any future ministerial arrangements that might be determined upon, to serve *with* Mr. Perceval, provided the principles he contended for were carried out; but that 'he never again would serve *under* Mr. Perceval in any circumstances.'[p]

Mr. Perceval was desirous of appointing Lord Sidmouth Foreign Secretary, in place of Lord Wellesley; but the prince regent, who had at this time a personal repugnance to Lord Sidmouth, positively refused his consent.[q] A year after, however, his lordship became a member of the Cabinet.[r]

A few weeks afterwards, this administration was deprived of its main-stay, by the assassination of the premier, on May 11, in the lobby of the House of Commons. Then came a struggle for power, which left the country virtually without a government for about a month. The prince regent, after the death of Mr. Perceval, being desirous of continuing the administration upon its existing basis, authorised Lord Eldon (the chancellor) to ascertain whether the cabinet were willing, if called upon by his royal highness, to carry on the

[p] Parl. Deb. v. 23, pp. 367-370. And see Walpole's Perceval, v. 2, pp. 234-271

[q] Lewis, Adminis. p. 329.

[r] *Ib.* p. 333.

government under any one of their colleagues whom his royal highness might select. The cabinet replied that they would be perfectly willing to do so, but that under the existing circumstances of the country they considered that the result would be very doubtful. They appeared to think that at any rate it was advisable to invite the co-operation of the leading Whig statesmen before venturing to act without them.[s] Accordingly, the prince regent, who was anxious to strengthen, as much as possible, his present ministry by the introduction therein of public men who coincided with the general principles on which the government of the country had been hitherto conducted, authorised the Earl of Liverpool (then Colonial Secretary) to negotiate with Lord Wellesley and Mr. Canning with a view to their joining the administration. A communication was therefore addressed by Lord Liverpool, with the consent of his colleagues, to these gentlemen, on May 17. But it was declined by them upon the ground that they could form part of no ministry that was not prepared to adopt a less restrictive policy towards the Roman Catholics. Lord Wellesley furthermore objected to the manner in which the war was carried on, as evincing but little improvement since he withdrew from the ministry on that account.[t] Notwithstanding this failure, the remaining members of the existing administration were unwilling to retire from office,[u] being confident of their ability to carry on the government, if only they could succeed in replacing their able and popular chief, and could agree together on a definite line of policy. But their continuance in office was not satisfactory to the House of Commons. Accordingly, on May 21, Mr. Stuart Wortley moved the adoption of an address to 1812.

[s] Twiss, Life of Eldon, v. 1, p. 493.

[t] Parl. Deb. v. 23, Appx. p. i.

[u] On May 20, Mr. Nicholas Vansittart was appointed to the office of Chancellor of the Exchequer, and a new writ moved for in the House of Commons. He took his seat on June 10.

1812. the prince regent, praying him to take measures for the formation of 'a strong and efficient administration.' The motion was resisted on the ground that it was 'an unconstitutional and unprecedented interference with the prerogative of the crown.' 'The House had interfered when an administration had been formed and found inefficient; but they never had come forward with their previous advice. It was their duty to watch over and control the crown; but there was no doctrine in the constitution better understood than that they had no right to interfere with the crown in the nomination of its servants.'[v] An amendment was moved, 'that the other orders of the day be read.' Mr. Wilberforce adverted to the case of 1784[w] as deciding the question, 'whether the House should have a previous negative on the appointment of the ministers of the crown. It had then been determined that it should not, and that it was only when either or both of the Houses of Parliament had had experience of some of the measures of ministers that, if they could not confide in the administration, it became their duty to address the throne, and express their judgment'[x] But Mr. Canning drew a proper distinction when he said that he perfectly concurred in the general doctrine laid down, that it is the exclusive prerogative of the crown to nominate its own ministers; that the case must be urgent indeed to authorise the interference of the House; but that he could not forget that Parliament had a double character. 'The House of Commons is a Council of Control, but it is likewise a Council of Advice;' and a case of 'transcendent importance' might arise, in which it would be 'competent for the legislature, by the timely interposition of advice, to prevent the necessity of control.'[y] This distinction was agreed to by the Foreign Secretary (Lord Castlereagh), who nevertheless con-

[v] Parl. Deb. v. 23, p. 253. See *ante*, p. 144.

[w] Parl. Deb. v. 23, p. 258.

[x] *Ib.* p. 267.

tended 'that the House was not by circumstances justified, at this moment, to interfere.' Mr. Wortley's motion, however, was agreed to by a majority of four, and the address was ordered to be presented to the prince regent by the mover and seconder. It received a gracious reply from his royal highness. Viewing the address as tantamount to a declaration of their own inefficiency, the remaining members of the ministry immediately placed their offices at the prince regent's disposal, and it was understood that they merely continued in office until his royal highness should signify his pleasure as to any future arrangement.[z] 1812.

During the whole of this ministerial interregnum, and until (on June 8) he was formally commissioned by the prince regent to form an administration, Lord Liverpool appears to have been regarded, on all sides, as the temporary head of the ministry. He was its chief mouth-piece in Parliament, the recognised organ of his colleagues, and the one whom, it was understood, they were desirous should be appointed to the premiership.[a]

At this juncture the prince regent laid his commands on the Marquis Wellesley to form a plan of administration, and submit the same for his approval. Accordingly, on May 23, the marquis requested Mr. Canning to be the medium of communication between himself and Lord Liverpool, for the purpose of inviting his lordship, with such of his colleagues as might be willing, to assist in the formation of a new ministry, on the basis of an early adjustment of the Roman Catholic claims, and the prosecution of the war with vigour. This overture was also declined. Simultaneously with his appeal to Lord Liverpool, Lord Wellesley addressed himself to Lords Grey and Grenville to the same effect, informing them, however, that he considered himself on this occasion as being merely the instrument for executing the prince regent's commands, and that he

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[z] Ld. Liverpool. Parl. Deb. v. 23, pp. 332, 357.

[a] Yonge, Life of Ld. Liverpool, v. 1, p. 385; v. 3, p. 459.

1812. neither claimed nor desired for himself any station in the projected administration. On May 26, while this negotiation was still pending, the prince regent revoked Lord Wellesley's general commission. But subsequently his lordship received more precise and definite powers, so that on June 1, he was able to inform Lord Grey that he had been fully commissioned to become the premier of an administration, to be formed on the basis above mentioned, and that he had been specially authorised to invite the co-operation of Lords Grey and Grenville, with permission to those noble lords to recommend four or five persons for seats in the cabinet, together with Lords Moira and Erskine, and Mr. Canning, who, it had been agreed, should form part of the same. In reply, Lords Grey and Grenville declined to participate in a government to be formed on the basis of 'the supposed balance of contending interests.' They considered that such a principle would 'establish within the cabinet itself a system of counteraction inconsistent with the prosecution of any uniform and consistent course of policy;' which could only be productive of weakness and disunion, and would be utterly opposed to the object of the House of Commons in recommending the formation of a strong and efficient administration. They furthermore objected to the nomination, on behalf of the prince regent, of Lords Moira and Erskine, and Mr. Canning, to seats in the cabinet, not on the plea that it was an unconstitutional exercise of power on the part of his royal highness, but because 'the first and vital principle of a cabinet was the mutual confidence of its members, and the total absence of everything like jealousy among them;' and this could only be insured when the parties invited to form a government were empowered 'to arrange the cabinet among themselves.'[b] On June 3, Lord Wellesley acquainted the prince regent of his failure in this under-

[b] Parl. Deb. v. 23, p. 428.

taking, and was informed that the task would be entrusted to other hands. On June 5, Lord Moira, as the confidential friend of the prince regent, endeavoured to bring about a political understanding with Lords Grey and Grenville, but they refused to enter into 'unauthorised discussions.' Next day Lord Moira again addressed their lordships, acquainting them that he had the prince regent's instructions to take steps towards the formation of a new ministry, with special authority to invite their lordships' co-operation. On the following day, a meeting took place between these noblemen, in the presence of Lord Erskine, at which Lord Moira stated that he had received his commission 'without any restriction or limitation whatever being laid by the prince on their considering any points which they judged useful for his service,' or as to the filling up of any place in the cabinet. This announcement was favourably received, but their lordships desired to know, at the outset, whether the liberty to be accorded to them in filling up offices in the new ministry extended to the consideration of new appointments to those great offices in the household which have been usually included in political arrangements made on a change of ministry. To this Lord Moira replied that he had no commands from the prince regent on this head; but that, for his own part, he could not concur in this exercise of power on the present occasion, because he should deem it, on public grounds, peculiarly objectionable. Their lordships answered that, on similar grounds, 'it appeared to them indispensable that the connection of the great offices of the court with the political administration should be clearly established in its first arrangements.' A decided difference of opinion as to this point having been thus expressed on both sides, the conversation ended here, with mutual declarations of regret.[c] In the subsequent explanations in Parliament 1812

[c] Parl. Deb. v. 23, Appx. pp. xx.-xlii. Ld. Grenville, it seems, distrusted the sincerity of the regent, and anticipated that a strong court

on this point, it was admitted that a new administration had a right to claim the removal of these officers of the household; but its exercise, under existing circumstances, was deemed inexpedient and impolitic. The prince regent himself appears to have been quite willing to part with all these functionaries; but Lord Moira, who was his adviser on this occasion, decidedly objected to such a proceeding.[d] After his unsatisfactory interview with the Whig noblemen, Lord Moira relinquished the task entrusted to him, and advised the prince regent to have recourse once more to the assistance of his former servants; whereupon the old ministry was reconstituted under the premiership of Lord Liverpool.[e]

10. *Lord Liverpool's Administration.*—1812.

1812. During the progress of these protracted negotiations the House of Commons continued sitting, and frequent attempts were made to invoke its interference, in the shape of remonstrances and appeals, in respect to the proposed ministerial arrangements, but without success. On May 30, after the failure of Lord Wellesley's first overtures to Lord Liverpool, and to Lords Grey and Grenville, Mr. Martin, of Galway, gave notice that he would, on June 3, move an address to the prince regent beseeching him to carry into effect his gracious declaration, in reply to the address of the House on May 21, and proceed without delay to appoint a strong ministry, 'possessing more of the confidence of the people than that which had lately been in existence.'[f] But on June 1, Mr. Canning informed the House that the Marquis Wellesley had been empowered to form a new administration. Mr. Wortley then proceeded to

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influence would be exercised against him if he took office. Buckingham, Mem. of Regency, v. 1, p. 224.

[d] Parl. Deb. v. 23, pp. 398-430, 453. And see Lewis, Adminis. pp. 329-340.

[e] Twiss, Life of Eldon, v. 1, p. 406.

[f] Parl. Deb. v. 23, p. 312.

enquire of Mr. Ponsonby whether any proposal had been made to him, or to those who acted with him in Parliament, to form part of the ministry; what reply had been given, and what conditions made. After some altercation on the point of order, these questions were permitted to be put, they being according to precedent, and unobjectionable in principle, 'as tending to explain the conduct and clear the characters of public men.'[g] It was then proposed that the House should go into committee to sanction a contract for a loan of a million and a half of money for the service of Ireland. This was objected to, on the ground that there was no responsible minister to answer for the same. But it was replied that the contract had been approved by the late premier, and that 'the Irish Chancellor of the Exchequer (the Right Hon. W. Fitzgerald) was before the House, and in a responsible situation.' Whereupon the resolution was agreed to.[h] 1812.

A few days before, objection was taken to the regularity of the House of Commons proceeding to vote a pecuniary provision for the family of the late lamented premier, on the ground that, as he united in his own person the offices of First Lord of the Treasury and Chancellor of the Exchequer, by his decease the country was left 'without an administration.' To this it was replied that no objection could be taken to the proceeding in point of form, inasmuch as the proposition 'had been regularly introduced to the House by a message from the throne, brought by a minister of the crown,' and there was no rule of the House requiring that such a proposition should be submitted by a Chancellor of the Exchequer. The House then proceeded to pass resolutions, based upon the prince regent's message on behalf of the family of Mr. Spencer Perceval, and in their liberality and respect for the memory of the murdered minister voted to increase the amount of the provision recommended by the crown.[i]

On June 2, Mr. Martin, on being questioned whether he meant to proceed with the motion of which he had given notice for the morrow, answered that, as he was

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[g] Parl. Deb. v. 23, pp. 313–316. [h] *Ib.* pp. 317, 318.
[i] *Ib.* pp. 199, 211, 217.

1812. satisfied with the commission given to Lord Wellesley, it was highly improbable, though not impossible, that he should bring forward his motion.[j] On June 3, the Marquis Wellesley informed the House of Lords that he had resigned the authority given him by the prince regent to form a new ministry, and that he had received permission to disclose all the circumstances attending his endeavours in that behalf, and would be ready, when called upon, to communicate them to the House. But he advised their lordships not to press for such disclosures at present, as it would be highly detrimental to the public interests.[k] After some debate, the House appeared in favour of delaying the explanations, and adjourned for two days. In the Commons, on the same day, Mr. Canning stated the fact of Lord Wellesley's non-success. Whereupon Mr. Martin began to question Mr. Ponsonby on the subject; but a member interposed, and declared that, if the attempt were persisted in, he would move to take the sense of the House upon it. This induced Mr. Martin to forbear, and also to abandon the motion of which he had given notice.[l] On June 5, Lord Grey informed the House of Lords of the failure of the negotiations entered into by Lord Wellesley with himself and Lord Grenville, attributing it to the fact that the prince regent had intimated his pleasure that 'four individuals expressly named should occupy seats in the cabinet;' whilst Lord Grey and his friends were merely invited to propose eight or nine other persons for this position. In reply Lord Moira stated that, 'with regard to the nomination of individuals, it was to be understood to be a mere statement of a wish' on the part of his royal highness, who presumed that the persons indicated would be generally acceptable.[m] On the same day, in the Commons, upon

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[j] Parl. Deb. v. 23, p. 331.
[k] *Ib.* p. 333.
[l] *Ib.* p. 338.
[m] *Ib.* pp. 343–345. See also his

the reception of the Report of the Committee of Ways and Means, objection was taken that the House was placed in the dilemma of either withholding the necessary supplies, or of granting them without a responsible minister. But the distinction was drawn that no opposition ought to be made on this ground 'till the last stage of each financial measure, by which time it was to be presumed an efficient administration would be formed.[n] General Gascoyne then gave notice that on the next sitting day he would move an address to the prince regent, expressing regret at the failure of the efforts to form a government, and a wish that no further delay should take place. It was then agreed, with some reluctance, to adjourn the House (from Friday) till Monday; an opinion of Mr. Pitt having been quoted that, in a crisis like the present, 'time should be measured not by days, but by hours,' and that 'the House should sit as often as it possibly could, and exert its vigilance over the proceedings of public men.'[o] But an end was about to be put to these protracted difficulties. On Monday, June 8, the Earl of Liverpool informed the House of Lords that he had been appointed First Lord of the Treasury, and had received authority to complete an administration as soon as possible. Lord Moira took this opportunity to state that the task confided to him of endeavouring to 'conciliate the differences of public men, and to form an administration which should possess the confidence of the country, had been unsuccessful.' Lord Wellesley then proceeded to give his hitherto deferred explanations as to the causes of the failure of his attempts in the same direction; and a discussion ensued between the various noble lords interested therein.[p] On the same day, the 1812.

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remarks at p. 380. A fuller explanation of the cause of the failure of this negotiation has been already given in this narrative; *ante*, p. 166.

[n] Parl. Deb. v. 23, p. 352.

[o] *Ib.* p. 354.

[p] *Ib.* pp. 356–380.

1812. House of Commons was informed, by Lord Castlereagh, of the commission given to Lord Liverpool; and members were urged to postpone the discussion of important questions until the new ministry was formed. Strong objections were made to any further delay, but ultimately the motions were put off, though the House continued to sit every day.[q]

On June 8, 1812, as we have seen, the Earl of Liverpool announced to Parliament that he had been appointed First Lord of the Treasury, with authority to complete the administration as soon as possible. The new ministry was substantially the same as the previous one, the principal difference being that—although the premier's own opinions were decidedly opposed to emancipation—it was agreed that the cabinet should consider the Roman Catholic claims as an 'open question,' while Mr. Perceval's administration, on the other hand, had been distinctly 'anti-Catholic.'[r] On this ground of similarity to its predecessor—which nevertheless had enjoyed the confidence of Parliament—the new administration was immediately assailed in the House of Commons. On June 11, Mr. Stuart Wortley, being of opinion that a stronger government might have been formed, notwithstanding the failure of the recent negotiations, proposed an address to the prince regent, expressing regret that the address of May 21, which had been so graciously received by his royal highness, had not led to the appointment of an administration that was 'entitled to the support of Parliament, and the confidence of the nation;' and entreating that such a ministry might be formed without delay.[s] To this an amendment was moved by Lord Folkestone, representing that the new administration was essentially the same as the one that had already experienced the disapprobation of the coun-

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[q] Parl. Deb. v. 23, pp. 381–387. 374; Ann. Reg. 1827, p. 91.
[r] May, Const. Hist. v. 2, pp. 364, [s] Parl. Deb. v. 23, p. 390.

try, and whose management of public affairs had been so prejudicial to the national interests; and imploring the appointment of men of wisdom, firmness, and prudence, in the present emergency of the state.[t] A second amendment, of a similar purport, was also submitted by Lord Milton.[u] After considerable debate, it became apparent that the sense of the House was opposed to these propositions, viewing them as attempts to dictate to the head of the executive in regard to the choice of his servants. It was urged, on behalf of the ministry, by Lord Castlereagh, that an interference by the House, under existing circumstances, would be unprecedented and unwarrantable. He claimed for the new administration 'the constitutional support of Parliament, till their actions should show them to be unworthy of it.' The several motions were then put and negatived; two of them without a division, and the third by a majority of 125.[v] The administration, thus vehemently assailed at the outset of its career, and presumed to be incapable of weathering even the current session, proved to be one of the most durable and successful cabinets ever known. Lord Liverpool, though not a man of remarkable abilities, was prudent, sagacious, and conciliatory; well fitted for the eminent position to which he had attained, and admirably adapted to cope with the peculiar evils of the times.[w] He was ably sustained by his colleagues in office, some of whom were greatly his superiors in intellect, but who, nevertheless, were willing to acknowledge his supremacy in council. With these advantages Lord Liverpool was enabled to continue at the helm of the state for upwards of fourteen years. During the whole of this period the cabinet continued without any material change of policy, and without any important additions

1812.

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[t] Parl. Deb. v. 23, p. 403.
[u] *Ib.* p. 406.
[v] *Ib.* pp. 397–404.
[w] Sir G. C. Lewis says that 'he (Lord Liverpool) performed the most important function of a prime minister, that of keeping his cabinet together.' Lewis, Adminis. p. 432.

of individual strength—except the return of Mr. Canning to office, in 1816,[x] and his promotion to the leadership of the House of Commons, in September 1822; the entrance of the Duke of Wellington into the ministry, as Master-General of the Ordnance, in 1819; of Mr. Peel, as Home Secretary, in 1822; and of Mr. Huskisson, as President of the Board of Trade, in 1823. At length,
1827. on February 17, 1827, Lord Liverpool was seized with an attack of paralysis, which, though not fatal at the time, was of such severity as to render his retention of office impossible.[y] Six weeks afterwards, as soon as returning consciousness permitted, he tendered his resignation to the king; and in his state of health the sovereign had no alternative but to accept it. During the long interval which elapsed between the seizure of Lord Liverpool and his resignation of office, the administration was left virtually without a head. Nor did his final retirement solve the difficulty. The men who had been content to act in subordination to Lord Liverpool, out of respect to his personal worth and integrity of purpose, were by no means willing to yield the pre-eminence to one of their own number. They were not disposed themselves to retire from office; but they required a chief, in whose political views they could coincide, and, above all, one who should be able to form a cabinet that would regard the Roman Catholic claims as an open question, upon a similar system of compromise to that which had been agreed upon by Lord Liverpool's administration. Both Mr. Peel and Mr. Canning were well qualified to fill the vacant post; but the former was the recognised leader of the anti-Catholic party, and the latter had been equally conspicuous for his advocacy of emancipation. Neither of these statesmen, moreover, could be expected to serve under the

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[x] Yonge, Life of Ld. Liverpool, v. 2, p. 253.

[y] He died on Dec. 4, 1828, aged 58 years.

other. Such were the difficulties wherein his Majesty was involved. The king's first attempt was to consult Mr. Canning (on March 27), in his capacity of a privy councillor, upon the reconstruction of the ministry. Mr. Canning recommended that a cabinet should be formed whose members would unite in opposing Roman Catholic emancipation, a policy which was in conformity with the acknowledged sentiments of his Majesty, and with the existing state of public opinion on the question. In giving this disinterested advice, Mr. Canning expressed his own readiness to retire from office rather than be an obstacle to such an arrangement. But this offer was rejected by the king, who desired to retain Mr. Canning in his service, and to place a peer of anti-Catholic opinions at the head of the ministry. Mr. Canning, however, objected to the 'superinduction of an anti-Catholic first minister over his head;' he was, in fact, desirous of placing Mr. Robinson, whose views on the Catholic question agreed with his own, at the head of the Treasury, and of retaining his place as Foreign Secretary, with the understanding that he should be the virtual premier. But this scheme proved to be impracticable. Other plans were then devised, but it was found impossible to agree upon anything which would allow the prominent members of the Liverpool cabinet to continue to act in concert. The latter part of February, and the whole of March, were consumed in these fruitless negotiations. All this time the old ministry nominally continued in office, although it was understood that they merely held their places until their successors should be appointed. The Liverpool administration was accordingly regarded as virtually defunct.[a] 1827.

During this ministerial interregnum, on March 30 it

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[a] Ann. Reg. 1827, pp. 90-96; Lewis, Adminis. p. 435. See R. Wilson's narrative of the formation of Canning's Administration, first published by Rev. H. Randolph in 1872.

1827. was moved in the House of Commons, by the Chancellor of the Exchequer, that the report of the Committee of Supply (being resolutions granting money which was required in order to carry on the public service) be brought up. Mr. Tierney opposed the motion, alleging that there was no administration to be responsible for such expenditure. Admitting the undoubted privilege of the king to choose his own ministers, he claimed for the House of Commons that it had a right to know to whom the administration had been entrusted before it separated for the Easter holidays. He therefore moved to defer the consideration of the report until May 1. Mr. Secretary Canning replied that the delay which had arisen in filling up the office of premier had resulted from a hope that Lord Liverpool's illness might prove but transitory, and that ministers were ready to assume as much responsibility for the same as for any other act of their administration. But no further delay would take place, inasmuch as the king, regarding the premier's recovery as hopeless, had authorised the formation of a new ministry. Under these circumstances, he claimed that the necessary supplies should be granted, otherwise the House would affix a stigma upon those who still remained in office, which would be equivalent to a vote of censure, and would strike at their existence as a ministry. Mr. Tierney then asked for an assurance that some definite arrangement with respect to the administration would be entered into before the House adjourned for the holidays. This Mr. Canning refused to give; whereupon Mr. Tierney declared that he must persist in his amendment, and resist any further grant of money until he knew in whose hands the government of the country had been placed. The Chancellor of the Exchequer reminded the House that they had already been informed that the proposed grant was merely sufficient to enable the government to be carried on until after the recess. No more money would be

asked for until a new administration was formed; otherwise he admitted that 'it would have been the imperative duty' of the House to oppose the same. The original motion was then put, and agreed to on division.[a] The want of agreement amongst the great party leaders with whom negotiations for a new ministry had been entered into induced Sir Thomas Lethbridge to give notice of a motion for an address to the king that he would be pleased to take into consideration, in the appointment of his ministry, 'the great importance of unanimity in any cabinet on questions affecting the vital interests of the empire.' On April 6, however, the day on which this motion was to have been brought forward, the king came to town, professedly in order to take decisive steps to put an end to this protracted disorganisation of the cabinet, and Sir T. Lethbridge, by the advice of his friends, determined not to press his motion, although invited to proceed with it by Mr. Secretary Canning. The king had now finally determined that the new ministry, like its predecessor, should consider the Catholic claims as an 'open question,' and also that Mr. Canning should be premier, notwithstanding his previous prominence as the strenuous advocate of emancipation.[b]

11. *Mr. Canning's Administration.—April* 1827.

It was on April 10, 1827, that Mr. Canning, who held at the time the office of Secretary of State for Foreign Affairs, was commissioned by the king to prepare a plan for the reconstruction of the administration under his own presidency. The policy he intended to pursue in reference to the Roman Catholic question is uncertain, and has been made the subject of 1827.

[a] Parl. Deb. N.S. v. 17, pp. 157-171.

[b] Ann. Reg. 1827, p. 99.

1827. controversy between his friends and opponents. A new writ was moved for, on behalf of Mr. Canning (upon his appointment as First Lord of the Treasury and Chancellor of the Exchequer), on April 12. At the same time it was moved to adjourn the House for the Easter holidays, until May 1. This motion was opposed by Mr. Tierney, who desired that the House should know of whom the new ministry would be composed before it adjourned for so long a period.[c] In reply, Mr. Wynn stated that undoubtedly some difficulties had occurred in the formation of a ministry, but that an arrangement was now in progress, and would certainly be completed before the time of adjournment had expired. The motions were then agreed to without a division. As soon as he was in a position to do so, Mr. Canning made overtures for assistance in the formation of a ministry to his colleagues in office; but for the most part they were either civilly or contemptuously rejected. Nearly the whole interval of the adjournment was spent in further negotiations. Disappointed in the support of his former associates, Mr. Canning was obliged to make new alliances, and his administration was finally completed by a Coalition with the Whigs, between whom and himself there had been heretofore a decided political antagonism.[c] Explanations were given in the House of Commons by the retiring as well as by the incoming ministers on May 1, and in the House of Lords on the day following. The new premier was assailed by an inveterate hostility in both Houses of Parliament; and attacks upon the new ministry were continued throughout the session. The principles of the Coalition were vehemently attacked,[d] and the Opposition made repeated attempts, by enquiries of ministers, to elicit further particulars than had already been communicated in regard

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Lewis, Adminis. p. 440. Bulwer's Life of Palmerston, v. 1, bk. iv pp. 548, 853, 1083, (Commons) pp. 507, 553, 1028.

[d] Parl. Deb. N.S. v. 17, (Lords)

to the circumstances which had attended the formation of the ministry; and particularly whether certain appointments had been made provisionally, with the intention of a future rearrangement of ministerial offices. But Mr. Canning refused to give any further explanations, or 'to answer a single question relative to the late transactions, unless it were brought forward as a motion.' He considered it to be beneath the dignity of the House to waste its time in irregular and extraneous discussions. It should revert to the old usage of Parliament, and submit by formal motions such questions as it might be desirable for the House to entertain.[e] This incessant exhibition of party spirit hindered the progress of public business, and prevented the passing of any important measures. The principal events of the fragment of the session which succeeded the formation of Mr. Canning's ministry were, the personal alienation of Mr. Peel from the government, and the insertion of a hostile amendment in the Corn Law Bill, upon motion of the Duke of Wellington, which led to the abandonment of the Bill by the Government.[f] At length, on July 2, Parliament was prorogued; but within six weeks of that period the great and gifted minister was no more. The labours and anxieties of office had brought him to an untimely grave.[g]

12. *Lord Goderich's Administration.—August* 1827.

The death of Mr. Canning led to the placing of Lord Goderich, early in August, at the head of the administration; otherwise the composition of the cabinet was but slightly altered. Mr. Herries was introduced into it as Chancellor of the Exchequer, in the room of Mr. Canning; but this appointment was so distasteful to the Whig section of the Cabinet, that the Marquis of 1827.

[e] *Ib.* pp. 932–934. [f] Lewis, Adminis. p. 442.
[g] Knight, v. 8, p. 208.

1827. Lansdowne waited upon the king to resign the seals of the Home Department. Mr. Herries was objected to on political grounds, and also because he was understood to be a nominee of the king. In point of fact Lord Goderich had selected Lord Palmerston for that office, but yielded to the wishes of the king, who had a strong dislike to Palmerston, and was very decided in his preference for Mr. Herries.[h] The new premier lacked the energy and decision of character that had enabled Mr. Canning to reconcile the discordant materials of which his cabinet was composed; accordingly, the dissensions which were unavoidable amongst such ill-assorted companions became more virulent, and rendered the ministry weaker and more helpless the nearer they approached to the meeting of Parliament. The Whigs, though seemingly reconciled to the presence of Mr. Herries, only tolerated him, and strove to diminish the just influence of his office by assuming the control of matters that were clearly within the jurisdiction of the finance minister. In so doing, they overthrew the government. The occasion which led to this result appeared trivial and unimportant, but it truly indicated the hostility which prevailed between the rival parties in the cabinet. Mr. Canning, on opening the budget in 1827, had avowed the necessity for a thorough scrutiny into the financial condition and resources of the country, and had pledged himself to propose to the House, in the ensuing session, the appointment of a finance committee. Desirous of carrying out this engagement, the new cabinet began, towards the middle of November, to turn their attention to the formation of this committee. Mr. Tierney (the Master of the Mint), and his Whig friends

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[h] Compare Bulwer's Life of Palmerston, v. 1, pp. 183, 196, 377, with Mr. Herries' own account of these transactions in his memoirs, by his son, v. 1, c. v. And see Ed. Rev. v. 153, p. 390. Ld. Lansdowne consented to remain in office on condition that he might have the royal authority for stating that he did so in submission to the express desire of his Majesty. Lewis, Adminis. p. 446, *n.*

in the cabinet, forthwith intrigued to get Lord Althorp fixed upon as the government nominee for the chairmanship of this committee. They succeeded in obtaining the premier's consent to his appointment, Lord Goderich being under the impression that the Chancellor of the Exchequer was a consenting party thereto. When he learnt that the proposition had not been communicated to Mr. Herries, he desired that he should be consulted upon it immediately. When Mr. Herries became aware that a matter so intimately connected with his own department had been arranged without his knowledge, he was naturally indignant. He was also of opinion that the appointment was objectionable on its own merits. Accordingly, he sought an interview with the premier on November 29, at which he made known to his lordship the strong objections he entertained, both on public and personal grounds, to Lord Althorp's nomination, and to the proceedings of his colleagues in reference thereto. Lord Goderich received the communication with considerable agitation; admitted the wrong that had been done; and agreed that no time should be lost in removing the objections which had been stated.[1] Mr. Herries subsequently made a protest, in writing, against the nomination of Lord Althorp; after which the matter seems to have remained in abeyance for about a month, during which interval the government was in the agonies of dissolution from other causes. The premier, in fact, tendered his resignation to the king. But about December 19, the ministerial difficulties were tided over for a while. Whereupon Mr. Herries again addressed the premier respecting the chairmanship of the Finance Committee, and offered to resign his office, so as to enable the government to appoint their own nominee. Hearing of this, Mr. Secretary Huskisson informed the premier that, 1827.

[1] Ann. Reg. 1828, p. 7.

unless Lord Althorp's appointment were persisted in he would himself resign. Some further correspondence took place between the parties concerned, but without leading to any better understanding. Accordingly the premier, being unable to restore harmony in the cabinet, waited upon the king on January 8, informed his Majesty of the irreconcilable differences amongst his colleagues, and by desire of the king retired from office.[j] Thus perished the Canning Coalition 'before it had been able to acquire a character, or gain that hold on public confidence which had been forfeited by the sudden reconciliation of the ancient enemies of whom it was composed.'[k] The dispute between Mr. Herries and Mr. Huskisson may have been the last straw that broke the camel's back; but, if so, it must have been already sinking under the pressure of accumulated burdens. The new ministry had scarcely been in existence more than five months, and was dissolved without ever having met Parliament; a circumstance wholly unprecedented in our political annals.

13. *The Duke of Wellington's Administration.*—1828.

1828. On January 8, 1828, the king sent for Lord Lyndhurst (the Lord Chancellor) and the Duke of Wellington, who was Commander-in-Chief, and entrusted the formation of a new ministry to the latter. Whereupon his grace resigned the office of Commander-in-Chief, and took that of First Lord of the Treasury.[l]

It appears, however, that at first the Duke of Wellington saw no objection to his retaining the command of the Army, in conjunction with the office of premier; and only gave way at the remonstrance

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[j] Bulwer's Life of Palmerston, v. 1, pp. 208–212. For accounts of the transactions which led to the downfall of this ministry, see Ann. Reg. 1828, cc. i., ii.; Memoir of the public life of Mr. Herries, 2 v., 1880; Welln. Desp. 3rd s. v. 4, pp. 73–180.

[k] Ann. Reg. 1828, p. 11.

[l] Hans. D. N.S. v. 18, p. 63.

of Sir Robert Peel, who told him that the country would not tolerate such an unconstitutional arrangement.[m] 1828.

There was no difficulty or delay in the construction of this government. It consisted, as nearly as possible, of men who had formed part of Lord Liverpool's administration, with the exception of certain Whigs brought in by Mr. Canning, who were excluded upon this occasion. Parliament was not in session when these events took place. It met on January 29, and new writs were immediately issued for the re-election of such members of the new ministry as had seats in the House of Commons. The only representative of government remaining in the House during this interval was the Secretary-at-War (Lord Palmerston), who had uninterruptedly continued in office, during successive administrations, since 1807; and who had been reappointed, with a seat in the cabinet, by the Duke of Wellington.[n] Notwithstanding the absence of the other cabinet ministers, and of their colleagues in office, the House proceeded with the debate upon the Address in answer to the speech from the throne, on the principle that the absence of ministers 'by no means takes from the House the right, or abridges the right, of free discussion.' But at the same time it was generally admitted that 'it would be inconvenient and unsatisfactory to attempt to enter upon questions intimately connected with disputable measures, in the absence of those whose duty it is to sustain those measures.'[o] Lord John Russell went further, and said that while 'he certainly saw symptoms of danger in the formation of the government, he would not make up his mind definitely until he saw it act;' for that 'it was but fair to wait for the measures of a new ministry before the House decided

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[m] Martin's Pr. Consort, v. 2, p. 262. Torrens' Life of Melbourne, v. 1, p. 301.

[n] See *post*, v. 2.

[o] Hans. D. N.S. v. 18, pp. 44, 49, 61.

1828. upon its character.'[p] Ministerial explanations were not given to the House of Commons until February 18, although the principal cabinet ministers had taken their seats several days previously. The delay, however, appears to have arisen from accidental causes.[q] This ministry, like its immediate predecessors, was composed of a combination of men of different political opinions, especially in regard to the Roman Catholic claims, which it had been expressly stipulated by the king should be treated as an open question.[r] Ere long, however, the followers of Mr. Canning (viz. Mr. Huskisson, Lords Dudley and Palmerston, and Messrs. Lamb and C. Grant) seceded from the cabinet, and the Duke of Wellington embraced the opportunity to replace them by men whose political principles were more akin to his own.[s] Early in the session the new ministry were defeated, in the House of Commons, upon the question of the repeal of the Corporation and Test Acts, but after feeling their way in the House of Lords, they agreed to abandon these restrictive laws in favour of the principle of religious liberty.[t] This triumph of the dissenting interest was speedily followed by another ministerial defeat through the adoption, in the House of Commons, of a resolution in favour of the Roman Catholic claims. Sir R. Peel, who was then Home Secretary, afterwards declared that it had been his intention to decline to remain in office as minister for the Home Department and leader of the House of Commons, 'being in a minority on the most important of domestic questions.' But the threatened danger to the ministry, from the retirement upon totally distinct grounds, of the Canningites,

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[p] Hans. D. N.S. v. 18, p. 67.

[q] *Ib.* pp. 450, 463, 538. Lord Palmerston having been requested, in the debate on the Address, to give some account of the recent cabinet changes, declined doing so, 'until the parties principally concerned shall be present.' Mir. of Parl. 1828, p. 21.

[r] Peel's Mem. v. 1, p. 12.

[s] Bulwer's Palmerston, v. 1, bk. v. Welln. Desp. 3rd s. v. 4, pp. 465–472.

[t] May, Const. Hist. v. 2, p. 389. Torrens, Life of Melbourne, v. 1, p. 310.

'and the real difficulty of constructing, from any combination of parties, any other government at that time,' induced him not to insist upon his own resignation at this moment.[u] In the interval between the close of the session, and the next meeting of Parliament, it became apparent, from events which transpired in Ireland, that the repeal of the Roman Catholic disabilities could no longer be delayed, consistently with the preservation of the public peace. Accordingly the ministry determined to give way, and on November 16, 1828, the Duke of Wellington submitted to the king a memorandum (prepared three months before) embodying a plan for the settlement of the Roman Catholic question; which his Majesty reluctantly consented should be laid before the heads of the established Church for their consideration. On January 12, 1829, Mr. Peel addressed 1829.
to the premier a memorandum, setting forth in much detail his reasons for believing that the Roman Catholic claims could no longer be treated as an open question; and that the consent of the king should be sought to a consideration of the question by a united cabinet. In this memorandum his colleagues concurred. A copy of it was communicated to the king by the Duke of Wellington; and on the following day his grace, Sir R. Peel, and the four other ministers who had hitherto opposed these claims, had each a separate interview with his Majesty, at which they succeeded, after much difficulty, in obtaining his consent to a re-consideration of the question, in connection with the existing state of Ireland. But it was understood that the king was not bound to adopt the conclusions of his advisers, whatever they might agree upon. The draft of the royal speech at the opening of Parliament contained a paragraph which implied an intention on the part of government to adjust this question. When it was submitted

[u] Peel's Mem. v. 1, p. 103.

1829. to the king he gave an unwilling consent to this passage. Afterwards, upon notice being given to the House of Commons of the introduction of the Bill itself, the king sent for the premier, the Lord Chancellor, and Mr. Peel, and insisted that it should contain no alteration in the terms of the oath of supremacy. The ministers declared that it must necessarily do so. Much unavailing argument ensued, which ended in ministers tendering their resignation, and in the king accepting the same. But in a few hours the king changed his mind, and wrote to the Duke of Wellington that he anticipated so much difficulty in the attempt to form a new administration, that he had decided to recall his late advisers, and authorise them to proceed with the measure they were about to submit to Parliament.[v] This impediment being removed, the Bill was introduced and speedily became law.[w]

No further ministerial difficulties occurred until after the death of King George IV., which took place on June 26, 1830. His Majesty William IV. intimated his pleasure that there should be no change of ministry; but the Duke of Wellington, in reviewing the situation, and with a view to concentrate the power of the government in the hands of the leader of the House of Commons, expressed a desire to take this opportunity to retire from office, and he earnestly entreated Sir R. Peel to undertake the government, as First Lord of the Treasury and Chancellor of the Exchequer. Sir R. Peel, however, was averse to this change, and the duke continued to serve as prime minister.[x] The breaking out in France

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[v] Peel's Mem. v. 1, pp. 284–350; Lewis, Adminis. pp. 456–463. Welln. Desp. 3rd s. vv. 4 & 5.

[w] This abandonment of their former political convictions on the part of ministers gave great offence to the Tory party, who contended that emancipation, if unavoidable, should at all events have been submitted to Parliament by a Whig and not a Tory administration. See May's Const. Hist. v. 2, p. 56. See also the case of Sir R. Peel and the Corn Laws, in 1846. *Ib.* p. 74.

[x] Welln. Desp. 3rd s. v. 7, pp. 102–108.

of the three days' Revolution of July 1830 gave an impetus to the advocates of parliamentary reform in England. At this juncture the dissolution of Parliament (consequent upon the demise of the crown) took place; and the elections were held under the sympathetic excitement caused by the 'three glorious days of July,' which naturally produced a House of Commons unfavourable to the Wellington ministry, and prepared to adopt measures of reform. In the month of September the country sustained an unexpected loss in the melancholy death of Mr. Huskisson, which occurred at the opening of the Liverpool and Manchester railway. Soon after this event, the Duke of Wellington invited Lord Palmerston to enter the cabinet, promising also a seat to two of his political friends. But his lordship declined office, unless Lords Grey and Lansdowne were included in the arrangement. This put an end to the matter, as it involved a complete remodelling of the cabinet, which the duke did not contemplate.[y] Upon the assembling of Parliament, in the following October, it speedily became apparent that a crisis was at hand. The downfall of the ministry was precipitated by a declaration from the Duke of Wellington that no reform was necessary. Great excitement arose in the public mind upon this question. On November 15, the ministry were defeated in the House of Commons on a motion to refer the civil list estimates to a select committee. The next morning they resigned.[z] It was afterwards admitted, both by the Duke of Wellington and Sir Robert Peel, that their retirement on this question was only a pretext, and that the real reason was a wish not to 'expose his Majesty and the country to the consequences that might result from the government going

1830.

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[y] Lewis, Adminis. p. 471. Bulwer's Palmerston, v. 1, p. 362.

[z] For the alleged causes of their resignation, see Welln. Desp. 3rd s. v. 7, pp. 360, 382, 460.

out on the success of the question of parliamentary reform.'[a]

14. *Earl Grey's Administration.*—1830.

1830. On November 16, 1830, the king sent for Earl Grey and entrusted him with the formation of a ministry. This ministry was intended to be comprehensive, or, in other words, a coalition, with parliamentary reform as its basis.[b] On the 22nd instant, his lordship informed the House of Lords that he had succeeded in the undertaking, and briefly explained the principles upon which his administration would be conducted. As soon as the state of the public business would permit, Parliament was adjourned until February 3. A committee of four members of government, two of whom were of the cabinet, was directed to prepare the details of a Reform Bill, upon principles laid down by the premier. Their report was adopted by the cabinet, and submitted for
1831. the approval of the king, on January 30, a day already memorable in English history as being the anniversary of the execution of Charles I. The king gave a reluctant consent to the measure, explaining, in a letter to the premier, his grave apprehensions on the subject.[c]

The Bill was introduced into the House of Commons on March 1, by Lord John Russell (notwithstanding that he only filled a subordinate place in the ministry and had no seat in the cabinet), as an acknowledgment of his former efforts in the cause of parliamentary reform. Its second reading was carried on March 21, by a majority of one only, in a remarkably full House. This was a forerunner of defeat, which speedily followed.

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[a] Knight, v. 8, p. 265. In other words, the retirement of this ministry arose from its weakness and want of public confidence. See Le Marchant, Life of Earl Spencer, pp. 253-257; Mir. of Parl. 1841, pp. 2095-96; and see Lewis, Adminis. p. 473.

[b] See Le Marchant, Life of Earl Spencer, p. 261.

[c] Corresp. with Earl Grey, v. 1, pp. 91, 94. And see Le Marchant, Life of Earl Spencer, c. xv.

On April 19, upon a motion that the number of members for England and Wales ought not to be diminished, the ministry were beaten by a majority of eight. On April 21, they were again defeated, in the House of Commons, on a question of adjournment which prevented certain votes that had been agreed to in committee of supply from being reported for concurrence. Ministers had meanwhile waited upon the king, with an urgent request that he would grant them a dissolution of Parliament. The king was not easily persuaded to this step, but they represented to him that the continuance of the existing House of Commons was incompatible with the peace and safety of the kingdom, and that after this last defeat, which prevented money already voted from being made use of for the public service, the dissolution ought to be immediate. Accordingly, at three o'clock on April 22, the king came down and prorogued Parliament, 'with a view to its immediate dissolution.' Meanwhile, rumours of his Majesty's intentions had gone abroad, and a motion was actually under discussion in the House of Lords for an address to the king, praying that he would be pleased to refrain from this exercise of his undoubted prerogative. Had the prorogation been deferred for another day, it is probable that both Houses would have agreed to address the king against the dissolution—a circumstance which, while it could not have prevented the exercise of the royal prerogative, might have operated injuriously upon public opinion.[d] The new Parliament was assembled on June 14, and it was soon apparent that the appeal to the people had been successful. The Reform Bill was again introduced, and it passed the Commons on September 21, by upwards of 100 majority. In the Lords a different fate awaited it. On the morning of 1831.

[d] Corresp. Earl Grey and Will. IV. v. 1, pp. 224-239. May, Const. Hist. v. 1, p. 118.

1831. Saturday, October 8, the motion for the second reading of the Bill was negatived by a majority of 41.

But when the second reading of the Reform Bill was negatived in the House of Lords, by a majority of 41, on the morning of October 8, 1831, it appears that the propriety of resigning was seriously discussed by the administration, and that they were only deterred from that step by the anxiety of the king that they should retain office, and by a resolution of the House of Commons, passed on October 10, declaring their unabated confidence in ministers, and their adherence to the principles of the Reform Bill.[e] A second defeat on the Bill, in the House of Lords, in the following session, actually produced a resignation of the ministry, but being sustained by the Commons, no other administration could be formed, and they were speedily recalled to office.

On the following Monday, the House of Commons resolved that they adhered to the principle and leading provisions of the Reform Bill, notwithstanding its rejection by the other House, and that they had unabated confidence in the ministry by whom it had been promoted.[f] On October 20, Parliament was prorogued, with a speech from the throne stating that its attention must necessarily be directed, at the opening of the ensuing session, to the important question of parliamentary reform. Parliament re-assembled on December 6, and a Reform Bill was again submitted, which passed the Commons by a large majority. This time the second reading was carried in the Lords, by a
1832. majority of nine; but a defeat in committee showed the impossibility of success in the present temper and condition of the House. The creation of a new batch of peers for the express purpose of carrying the Bill was openly advocated out of doors; but the ministry shrank, at first, from having recourse to such an extreme proceeding. But when it became clear that a direct and apparently insurmountable obstacle to the passing of a

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[e] Roebuck, Hist. of Whig Ministry, v. 2, p. 217; Mir. of Parl. 1831, pp. 2880, 2910.

[f] See Grey, Cor. with Will. IV. v. 1, p. 375; Le Marchant, Life of Spencer, c. xvii.

Reform Bill was to be found in the existing condition of the House of Lords, they at length determined upon this step. In a cabinet minute, dated January 13, 1832, ministers tendered to the king their advice that in the event of their inability to carry the Bill in the Lords, he should exercise his prerogative to create a sufficient number of peers to insure its safety. Again on May 8, after their defeat on Lord Lyndhurst's motion, in committee on the bill, ministers reiterated their request. But his Majesty refused to comply with it. At the outset, the king reluctantly consented to a limited addition to the peerage, which should not exceed twenty-one (though he afterwards agreed to leave the number indefinite); and which should be effected, mainly, by calling up heirs to existing peerages. But he positively declined to sanction an 'unlimited' addition to the House of Lords; or that there should be more than three *new creations*, for the purpose of carrying Reform.[g] Thereupon the ministry resigned. Their resignation was announced to both Houses on the following evening. Next day, the House of Commons passed an address to the king, expressing their deep regret at this event, and imploring him 'to call to his councils such persons only as will carry into effect, unimpaired in all its essential provisions,' the Reform Bill recently agreed to by the House. Meanwhile, the Duke of Wellington had been authorised to form a new administration; but, after conferring with Lord Lyndhurst and Sir Robert Peel, he abandoned the task; it being evident that such an arrangement would not be acceptable to the House of Commons.[h] The king then recalled his late advisers, and most reluctantly gave them a written permission 'to create such a number of peers as will be sufficient to insure the passing of the

1832.

[g] Grey, v. 2, pp. 311–333. Ed. Rev. v. 133, p. 306.

[h] Well. Desp. 3rd s. v. 8, pp. 304–330. Mem. of J. C. Herries, v. 2, p. 158.

1832. Reform Bill; first calling up peers' eldest sons. (Signed) William R. Windsor, May 17, 1832.' The authenticity of this document, which was first made public in Roebuck's 'History of the Whig Ministry of 1830' (v. 2, p. 331), has been disputed upon very plausible grounds.[i] It is certainly remarkable that, while it correctly states the terms of the agreement between the king and his ministers at this crisis, no mention is made of it in the official 'Correspondence between Earl Grey and King William IV.,' which was published in 1867, and which includes many letters on this subject.[j] The editor of the correspondence justifies the king in delaying, to the last extremity, his consent to the proposed creation of peers.[k] But at the eleventh hour, the necessity for this extreme proceeding was avoided by the temporary withdrawal from the House of a sufficient number of the Tory peers to give the ministry a decided majority upon the Bill, during its further progress through Parliament. The Opposition were induced to take this course by a personal communication from his Majesty, through his Private Secretary; an interference which, however irregular it may appear, undoubtedly tended to avert the difficulties of an alarming crisis.[l] After this, the Reform Bills for England, Scotland, and Ireland became law without further impediment. Parliament was then dissolved, in order that the new representative system might be put into immediate operation.

1834. The new Parliament, though composed of various discordant elements, fully sustained the ministerial policy. But on May 27, 1834, a resolution was proposed in the House of Commons in favour of the re-

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[i] See Ed. Rev. v. 125, pp. 539–546.

[j] V. 2, pp. 68–139, 223–234, 254, 299–346, 394–444.

[k] Preface, p. ix.

[l] Le Marchant, Life of Spencer, c. xx. Torrens' Life of Melbourne, v 1, c. xix. The course taken by the Tory peers was not the result of concerted plan, for the Duke of Wellington, though he decided, individually, to follow the course, declined to advise it, with authority, upon his usual supporters. See Welln. Desp. 3rd s. v. 8, pp. 341, 356. See also *post*, v. 2.

duction of the temporalities of the Irish Established Church. This led to the secession of four members of the cabinet (Stanley, Graham, Richmond, and Ripon), who were unable to agree with their colleagues upon the manner in which this question should be met. The vacancies in the ministry were filled up; but very soon another difficulty arose. Lord Althorp, the Chancellor of the Exchequer, determined to retire from the cabinet, on account of a disagreement arising out of the form in which the Irish Coercion Bill should be framed and submitted to Parliament. He had himself authorised the Chief Secretary for Ireland to acquaint Mr. O'Connell that certain objectionable clauses would not be included therein. Nevertheless a majority of the cabinet, including the premier, had insisted upon their insertion. This occasioned much angry debate, and personal recrimination, in Parliament. The conflicting opinions expressed by ministers on this question were of so grave a character that a compromise was deemed to be incompatible with personal honour, or a sense of public duty.[m] The ministry had been considerably weakened by the former resignations, and the loss of Lord Althorp was the finishing stroke. Accordingly, on July 8, Lords Grey and Althorp together waited upon the king, and formally tendered their resignations. On the following day, Earl Grey informed the House of Lords of the break-up of his administration.[n]

15. *Lord Melbourne's First Administration.—July* 1834.

On July 14, 1834, Viscount Melbourne announced to the House of Lords that he had been entrusted with 1834.

[m] See Le Marchant, Life of Earl Spencer, c. xxii. Ld. Broughton's Recollections, in Ed. Rev. v. 133, p. 311. Ld. Hatherton's Memoir and Correspondence on the political occurrences in 1834, pub. by H. Reeve in 1872. Peel's Mem. v. 2, p. 10.

[n] *Ib.* p. 1; Knight, v. 8, p. 345. This ministry, before its retirement, had lost the confidence of the king, on account of their known views with respect to the Irish Church. See *ante*, p. 133.

the formation of a new ministry. He was instructed by the king, in the first instance, to endeavour to obtain the services 'of all those who stand at the head of the respective parties in the country,' and for that purpose was directed by his Majesty to enter into communication with the Duke of Wellington, Sir R. Peel, Mr. Stanley, and other parliamentary leaders. But these negotiations proved abortive, and the king was obliged to consent to the formation of another Whig ministry, which was, in fact, a reconstruction of the previous one under another chief.[o] On July 17, Lord Althorp informed the House of Commons that he had resumed his former office, and that the new administration was complete. The Irish Coercion Bill, then before the House of Lords, was dropped, and a new and less restrictive measure was brought forward by Lord Althorp, and became law.[p] But the duration of this ministry was very brief. By the death of his father, Lord Althorp inherited a seat in the House of Peers. This necessitated the appointment of a new Chancellor of the Exchequer and leader of the House of Commons. Whereupon Lord Melbourne, both verbally and by letter of November 12, 1834, made known to the king the posture of affairs, and sought his commands as to the filling up of the vacant offices; indicating, at the same time, his desire that the lead of the House of Commons should be conferred upon Lord John Russell. The king, however, had by this time become a convert to the principles of the Opposition; he accordingly informed the premier that in his opinion the loss of Lord Althorp from the Commons had so materially weakened the government in that House as to render it impossible for them to continue to conduct the public affairs; particularly when it was remembered that they

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[o] Peel's Mem. v. 2, pp. 1–13. Bulwer's Life of Palmerston, v. 2, p. 203. Torrens, Life of Melbourne, v. 2, c. 1.

[p] Le Marchant, Life of Spencer, p. 518.

were in a minority in the other House. Under these circumstances, his Majesty determined to consider the administration at an end, and stated that he should send for the Duke of Wellington.[q]

16. *Sir Robert Peel's First Administration.—Nov.* 1834.

Immediately after the dismissal of the Melbourne administration the king sent for the Duke of Wellington, and requested him to undertake to form a government. The duke earnestly recommended that his Majesty's choice might fall upon Sir Robert Peel, on account of the peculiar difficulties presented by the existing state of the House of Commons. The king consented, but remarked that he had given the preference to the duke because of the absence of Sir R. Peel from England. It was then agreed to summon Sir R. Peel home at once. In the interim, as it was necessary to take possession of the government, the Duke of Wellington assumed the temporary charge of the seals of the secretariat, and of the office of First Lord of the Treasury, being of opinion that 'nothing would be more unfair than to call upon Sir R. Peel to put himself at the head of a government which another individual should have formed.'[r] Anxious to place his services at his sovereign's disposal in this difficult crisis, Sir R. Peel unhesitatingly agreed to accept the proffered task, although he 'greatly doubted the policy' which had led to the breaking up of Lord Melbourne's government, and 'entertained little hope that the ministry about to replace it would be a stable one—would command such a majority in the House of Commons as would enable it to transact the public business.' He was well aware that by his acceptance of office he became 'technically, if not morally,

1834.

[q] Le Marchant, Life of Spencer, p. 523. Torrens, Life of Melbourne, v. 2, c. ii. Bulwer's Life of Palmerston, v. 2, p. 208. Stockmar's Mem. v. 1, p. 307.

[r] Peel's Mem. v. 2, p. 20. For observations upon this act of the Duke of Wellington, see *post*, v. 2.

1834. responsible for the dissolution of the preceding government, although he had not the remotest concern in it.'[s]

It is noticeable, in proof of the superior correctness of Sir R. Peel's views of his constitutional obligations, that the Duke of Wellington had previously written to him to say that he did not think the new ministers were 'at all responsible' for the king's quarrel with their predecessors; it being 'an affair quite settled' when his Majesty sent for the Duke.[t]

He was also fully sensible of the hazard he incurred in meeting a House of Commons wherein his personal followers were in a large minority, with but a doubtful prospect of improving his position by a dissolution of Parliament. Nevertheless he did not shrink from the endeavour to respond to his sovereign's appeal, being persuaded that Parliament would 'so far maintain the prerogative of the king as to give to the ministers of his choice, not an implicit confidence, but a fair trial.'[u] After weighing the counterbalancing advantages of an immediate dissolution of Parliament, or of an attempt to carry on the government, in the first instance, with the existing House of Commons, Sir Robert decided in favour of a dissolution, upon grounds of public policy, which are explained in his memoirs.[v] A new Parliament was accordingly convened for February 19, 1835, but the result of the elections, while it largely increased the number of Conservative members, failed to confer upon the new ministry sufficient strength to enable them to carry on the government. At the outset of the session the ministry were defeated in the Commons on the choice of a Speaker, and upon an amendment to the Address.[w]

In the debate upon the Address in the Lords, Lord Chancellor Eldon defended the change of ministry, and

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[s] Peel's Mem. v. 2, p. 31.

[t] *Ib.* p. 23.

[u] Tamworth Manifesto, . Torrens, Life of Melbourne, v. 2, p. 99. Peel's Mem. v. 2, p. 67.

[v] *Ib.* pp. 43–48.

[w] Knight, v. 8, p. 355. Torrens, Life of Melbourne, v. 2, c. iii.

consequent dissolution of Parliament, on the ground that the previous secession of four cabinet ministers (see *ante*, p. 193) had so weakened the government, that when Lord Althorp was obliged to vacate his seat and office in the Commons, it became probable that any reconstruction 'was not likely to be permanent, but would be liable to be broken up, at a time when it might be productive of much more mischief than the breaking of it up at that moment was calculated to occasion.'[x] 1835.

In the Commons, Lord John Russell argued the question against the change of ministry with great force and ability, contending that there had been no sufficient cause to justify the exercise of the prerogative in dismissing the late ministry and in dissolving Parliament. He also complained of the new cabinet for not having met Parliament before its dissolution, in order to ascertain whether they would be allowed a fair trial, or be met with a factious Opposition against the opinion of the country; in which case a dissolution might have been properly advised.[y] It was furthermore contended, by Lords Morpeth and Stanley, that 'it is the right and privilege of the House of Commons to express its opinion and judgment, and even to offer advice to the sovereign, as to the circumstances under which, and the mode in which, he may have been advised to exercise his undoubted prerogative of choosing the ministers of the crown.'[z] The Opposition, however, confined themselves to moving an amendment to the Address in answer to the speech, to represent the regret of the House that the progress of certain important reforms, which had engaged the attention of the late Parliament, should have been interrupted and endangered by the unnecessary dissolution of a Parliament earnestly intent upon the rigorous prosecution of such measures. This amendment was carried against ministers. It elicited a reply

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Mir. of Parl. 1835, p. 35. [y] *Ib.* p. 85. [z] *Ib.* p. 74.

1835. from the king, expressing regret that the House did not concur with him as to the policy of the appeal he had recently made to the sense of his people, and expressing a confident trust that the success of no good measures would be injuriously affected thereby. Shortly after this reply was communicated, Sir Robert Peel took an opportunity of informing the House that he did not intend to resign on account of his defeat upon the Address, but should persevere, and submit to the consideration and approval of Parliament the measures contemplated in the speech from the throne.[a] But further defeats awaited him. He was obliged to propose Mr. Bernal for the chair of the Committee of Ways and Means, from inability to secure the election of any one in the confidence of the government. The first diplomatic appointment made by the new ministry, that of the Marquis of Londonderry, as ambassador to the court of St. Petersburg, 'could not have been persisted in,' and was resigned, in consequence of the interference of the House of Commons. In fact, they met with continual hindrance in the conduct of public business, and had not 'the weight and authority to check, through the opinion and voice of a majority, the vexatious opposition of individual members.'[b] At length, after several minor defeats, they were left in a minority upon a motion of Lord John Russell, in regard to the appropriation of the temporalities of the Irish Church, and the adjustment of the Irish tithe question.[c] Anticipating defeat upon this important motion, Sir Robert Peel wrote to the king on March 29, intimating that the pending debate would necessarily assume the ground of want of confidence in the administration. Following upon a succession of votes adverse to the views of ministers, there was a 'great public evil in permitting the House of Commons to exhibit itself to the country free

[a] Mir. of Parl. 1835, pp. 146, 148. [b] Peel, Mem. v. 2, pp. 87, 88.
[c] Com. Journ. v. 90, p. 208.

from any control on the part of the executive government, and usurping, in consequence of the absence of that control, many of the functions of the government.' This state of things 'might be tolerated so long as there was a rational hope of converting a ministerial minority into a majority, or of making an appeal to the people with a prospect of decided success.' But Sir Robert Peel entertained the apprehension that 'from continued perseverance in the attempt to govern by a minority, it would be difficult for an administration, however composed, to recover a control over the House of Commons; that the House of Commons, having been habituated to the exercise of functions not properly belonging to them, will be unwilling to relinquish it; and that the royal prerogatives and royal authority will inevitably suffer from continued manifestation of weakness on the part of the executive government.'[d] On April 7, Lord John Russell's motion was decided against ministers by a majority of 27. Next day, Sir Robert Peel informed the House that he and his colleagues had resigned office, in consequence of that vote, regarding it as tantamount to a declaration by the House of want of confidence in the government; and believing that, 'in conformity with the constitution, a government ought not to persist in carrying on public affairs, after a fair trial, against the decided opinion of a majority of the House of Commons;'[e] notwithstanding that it may enjoy, as upon this occasion, the confidence and favour of the crown, and possess a working majority in the House of Lords.[f] Although Sir R. Peel resigned on Wednesday, April 8, it was not until the following Saturday that the king made up his mind to entrust the formation of a government to Lord Melbourne.[g] 1835.

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[d] Peel, v. 2, pp. 91–93. For further explanations by Sir R. Peel of his position at this time, see Mir. of Parl. 1841, sess. 2, pp. 158, 159, 211.

[e] Mir. of Parl. 1835, pp. 817, 818.

[f] *Ib.* 1841, p. 2032.

[g] See Ed. Rev. v. 133, p. 315. Torrens, Life of Melbourne, v. 2, c. iv.

17. *Lord Melbourne's Second Administration.*—1835.

1835. On April 18, Viscount Melbourne announced in the House of Lords that, by command of the king, he had formed a new administration. Both Houses adjourned until May 12, to enable the ministers in the Commons to go for re-election. No event occurred to affect the stability of this administration until after the death of King William IV., and the accession of Queen Victoria
1837. in 1837. Reposing entire confidence in the men whose opinions harmonised with those in which she had been educated, her Majesty continued the Melbourne ministry in office as her constitutional advisers. But on May
1839. 6, 1839, the ministry sustained a moral defeat upon their Bill to suspend the constitution of the Island of Jamaica, the second reading of which was made an occasion for a trial of party strength. It was carried by a majority of five only, in a full House. Upon the following day, Lord John Russell informed the House of the resignation of ministers; alleging that it had taken place on account of their not possessing such support in the House of Commons as would enable them efficiently to carry on the public business.[h] Internal weakness, however, was the true ground of their fall. Having attained to power through a combination of parties of the most diverse political aims and aspirations, they were unable to act with vigour and determination. In their attempts to carry out the principle in respect to the Irish Church, by the assertion of which they had driven Sir R. Peel from power, they signally failed. The Whigs had pledged themselves to connect the settlement of the tithe question with the appropriation of the surplus revenues of the Established Church in Ireland. But the Conservatives were determined to resist that principle, and having a

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[h] Mir. of Parl. 1839, p. 2301; and see Ld. John Russell's remarks, in *Ib.* 1841, p. 2126. And Torrens, Life of Melbourne, v. 2, p. 209.

large majority in the House of Lords, their resistance was effectual. After several attempts to induce the Lords to give way, the victory gained in 1835 was abandoned in 1838 by the surrender of the appropriation scheme by ministers themselves. This was a moral defeat to the Whig ministry, which largely contributed to turn the scale of popular favour against them.[i]

On June 24, 1867, Earl Russell persuaded the House of Lords to re-open the Irish Church question, by moving for the issue of a Royal Commission thereupon. The motion was agreed to, with an amendment restricting the inquiry to the obtaining of full and accurate information on the subject.[j] In 1868, the Irish Church was disestablished, but liberal provision was made for the disposal of the Church property.

Their inability to control legislation in Parliament in conformity with their avowed convictions was notorious. Hence arose the necessity for their resignation at this juncture.

At the suggestion of the Duke of Wellington, to whom her Majesty applied for counsel upon this occasion, Sir Robert Peel was entrusted with the formation of a new ministry.[k] The next day he submitted to the queen a list of the persons whom he proposed to associate with himself in office, which was approved of by her Majesty. But a difficulty occurred in reference to the ladies of the bedchamber. Sir Robert Peel was of opinion that the continuance in attendance upon the person of the sovereign of ladies who had been originally appointed upon the recommendation of the Whig ministry, and who were nearly all related to the leaders of the opposite political party, was likely to prove prejudicial to the interests of his government. His objection appears to have chiefly applied to the wife of the Lord Lieutenant of Ireland, and to the sister of the Secretary

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[i] May, Const. Hist. v. 2, pp. 485–487.

[j] Hans. D. v. 188, pp. 354–423.

[k] Duke of Buckingham's Courts and Cabinets of William IV. &c. v. 2, p. 384.

1839. for Ireland, on account of the widely different views of policy towards that country which were entertained by himself and by his predecessors in office. He accordingly respectfully urged upon the queen the propriety of making some change in the appointment of ladies to fill the great offices of her household. Her Majesty replied that it was repugnant to her feelings to make any such change, and that she considered such a course to be contrary to usage, and one that she could not adopt. Whereupon Sir Robert immediately relinquished the trust which had been committed to him. Her Majesty then reinstated her former ministers.[1] Although the 'bedchamber question' brought back Lord Melbourne's ministry, it was only for a few months.

The restored administration made strenuous efforts to justify their new lease of life.[m] But they were unable to conduct the government with credit or success in the face of a vigorous and united Opposition, through whom they were subjected to frequent defeats in both Houses of Parliament.

Abstract of defeats sustained by the Melbourne administration in the two Houses of Parliament, from its formation in April 1835 to March 1840. Read to the House of Lords by the Marquis of Londonderry, who 'pledged his honour for its accuracy.'[n]

Ministers in a minority		In Commons	In Lords
In Session of	1835	4	11
"	1836	11	18
"	1837	9	5
"	1838	21	4
"	1839	8	11
"	1840 (up to Mar.)	5	...
		58	49
			58
	Total defeats		107

[1] For fuller account of these transactions see *post*, p. 292.

[m] Torrens, Life of Melb., v. 2, p. 307.

[n] Mir. of Parl. 1840, p. 2310.

Number of Bills introduced by this ministry, and not passed through Parliament:— 1841.

In Session	1836	29
„	1837	21
„	1838	34
„	1839	28
	Total	112

At length, on May 27, 1841, after the ministry had sustained a defeat upon the important question of the sugar duties, and had still declared their intention of proceeding with the business of the country,[o] Sir Robert Peel moved a vote of want of confidence, which embraced two propositions: (1) that 'her Majesty's ministers do not sufficiently possess the confidence of the House of Commons to enable them to carry through the House measures which they deem of essential importance to the public welfare;' (2) that 'their continuance in office under such circumstances is at variance with the spirit of the constitution.' He based his first proposition upon their repeated defeats and obstructions in the attempt to carry on the public business. He defined the 'spirit of the constitution' to mean the system of parliamentary government which has prevailed since the accession of the house of Hanover, which implies that the ministers of the crown should have the confidence of the House of Commons, and which has placed 'the centre of gravity in the state' in that House. He defended his second proposition by reviewing the history of the principal prime ministers from the days of Sir Robert Walpole to recent times, showing that they had invariably yielded to the necessity implied by a withdrawal of the confidence of the House of Commons, and abdicated their functions as servants of the crown. The seeming exception in the case of Mr. Pitt, in 1783, he met by

[o] They would have resigned at this time, but that a majority of the Cabinet were in favour of a dissolution of Parliament. Martin's Pr. Consort, v. 1, p. 107. And see Mir. of Parl. 1841, pp. 1843, 2129, 2137.

1841 showing that the protracted hostility of the House of Commons against that minister (and which he resisted until he could take the sense of the people by a dissolution of Parliament) did not arise from want of confidence in his measures, having commenced before he took his seat on the Treasury benches, but from a suspicion that he owed his appointment to an unconstitutional proceeding—that is to say, to secret influence, by whose agency the previous administration had been overthrown. Mr. Pitt, however, resisted the attempt of the majority of the House of Commons, on the ground that it was irregular to endeavour to control the prerogative of the crown in the choice of its ministers, by denouncing them without waiting to see their acts.[p]

In reply, Lord John Russell acquiesced in the general principle that ministers ought to possess the confidence of the House of Commons, and admitted that, if the House should 'continue to refuse its confidence' to them, it would be 'impossible for them to continue in office,' provided there is 'a ministry capable of being formed to succeed them.'[q] His lordship contended, however, that isolated defeats of a government possessing the general confidence of the crown and of Parliament, although they be upon questions of great importance, do not involve the necessity for resignation. For example: Lord Sunderland was defeated upon the Peerage Bill, a measure recommended by royal message, and did not resign, neither did Lord North when Dunning carried against him his famous resolution against the influence of the crown. Mr. Pitt was defeated, on different occasions, on the Westminster scrutiny, on parliamentary reform, on his proposition for a general fortification of the coasts, on his French commercial treaty, on his proposition concerning the trade of Ireland, on the im-

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[p] Mir. of Parl. 1841, pp. 1933-1945, 2119.
[q] *Ib.* pp. 2119, 2120.

peachment of his friend and colleague, Lord Melville, and also his India Bill, which was one of the principal measures of his administration; and yet, in none of these cases, did he feel called upon to resign.[r] 1841.

Upon the rejection of the India Bill, Mr. Fox said, 'I readily agree that the failure of any Bill proposed by a minister afforded no ground for that minister's dismissal from office: this is a sound doctrine.' This remark was quoted, with approval, by Lord John Russell.[s]

Again, Lord Liverpool was defeated upon the Bill of Pains and Penalties against Queen Caroline, and, in 1816, on the question of the renewal of the property-tax, the loss of which occasioned a deficiency of twelve millions of revenue.[t] And the Duke of Wellington was defeated upon a motion for the repeal of the Test and Corporation Acts, which was carried against ministers in the House of Commons.[u] In none of these instances did a resignation ensue.

The friends of the ministry, however, pressed this point too far when they proceeded to state that it mattered little whether government were able to carry their legislative measures, so long as they were not censured by Parliament for the exercise of their administrative functions. Lord Stanley and Sir R. Peel concurred in declaring this to be a most unconstitutional and dangerous doctrine.[v] Lord John Russell's views on this subject were more cautiously and correctly expressed. He called attention to the fact that in recent times, and especially since the passing of the Reform Bill, the country and the constitution, in its practical development, have demanded more at the hands of ministers than formerly. Up to the time of Mr. Pitt, his lordship observed, 'the usages of the constitution did not require that those at the head of the govern-

[r] Mir. of Parl. 1841, pp. 1970, 1971, 2030, 2095.
[s] *Ib.* p. 2119.
[t] *Ib.* pp. 2030, 2095.
[u] *Ib.* p. 2121.
[v] *Ib.* pp. 2110, 2134.

1841. ment should bring forward legislative measures, and, indeed, for the greater part of the last century, did not even require them to take a uniform and consistent part either in supporting or opposing measures submitted to Parliament.' Nowadays, 'what with the necessity for legislation, the difficulty which individual members experience in carrying through Bills, the great changes so long delayed, and which (after the passing of the Reform Bill) it became indispensable to make, suddenly, and on various subjects—from all these causes an expectation has arisen that the government should bring forward measures on matters which excite public attention, and do their best to carry them through the House.' 'In this case,' he added, 'I think it is unreasonable to expect that a government should possess the same uniform and general support, on the part of the House of Commons, which was required when ministries had merely acts of administration to perform.' 'If, on the one hand, new duties have been imposed on ministers, and you require them to carry through Parliament measures which they deem of essential importance, so, on the other hand, you must make a fair allowance for the effect of discussion and the expression of the deliberate opinions—first, of members of this House, and, secondly, of our constituents—which will inevitably occasion the alteration of some measures and the rejection of others.' As a case in point, he instanced an alteration, suggested by Sir R. Peel, when at the head of only a small minority, in an important government measure, and to which the government, after due consideration, acceded.[w]

Adverting to the probability of a dissolution of Parliament, Lord John Russell remarked that the ministry had uttered no threats or menaces on the subject. He considered that 'a dissolution, like other prerogatives of the crown, is one in which the House has a right, in

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[w] Mir. of Parl. 1841, pp. 2120-2122.

certain cases, to interfere. But I think the only ground upon which it can properly interfere is when this House can say that the course of legislation and administration is proceeding harmoniously, and likely to continue to lead to beneficial results, ... and that a dissolution would be a needless and wanton interference with the course of business. Such was the ground taken by Mr. Fox, in 1784, when an Address was moved against the dissolution of Parliament.' 'Such was the ground that we took, when, in 1835, we moved and carried a vote of censure against Sir R. Peel for the advice he gave to the crown for the dissolution of that Parliament.' He then added that it had been asserted by no one that the present Parliament, if not sooner dissolved, was likely to continue to its natural term with benefit to the country, or with improvement to its legislation.[x] 1841.

Upon the whole, Lord John Russell resisted the motion, as 'not rightly founded in precedent, and, above all, ill-suited to the present condition and state of our constitution.' If it meant that the ministry were not entitled to advise a dissolution of Parliament, it was an unjustifiable interference with the royal prerogative. If not so intended, he was prepared to admit that ministers would not think it right, after the decision of the House on the sugar question, to continue in office with the existing Parliament any longer than would suffice to prepare for the speedy assembling of a 'new Parliament to decide upon the whole question at issue.' With this admission, 'where is the necessity and where the justification of the resolution?'[y]

In reply, Sir R. Peel acknowledged that no minister who is obstructed by a powerful Opposition, upon the first formation of his government, is bound to resign after his first defeat. He did not consider it the duty of a minister, having met with obstructions upon his

[x] Mir. of Parl. 1841, pp. 2127-2129. [y] *Ib.* pp. 2129, 2130.

1841. financial propositions, at once to resign. He should not feel himself bound to resign on any single defeat, being of opinion that 'the propriety of resignation depends on a combination of circumstances.'[z] He also admitted the existence of an alternative, in the case of a ministry who had lost the confidence of the House of Commons, between resignation and dissolution, saying, 'if there be a clear intention forthwith to dissolve Parliament, that may be a vindication of the government, but the dissolution ought to be immediate. The House of Commons has no other mode of marking its sense of the unconstitutional tenure of power than by passing some such resolution as that which I have proposed, and which I most properly submitted because I could not, and did not, know the intentions of government with respect to a dissolution.' In conclusion, Sir Robert Peel said that he had selected this course 'less with a view to any party advantage than to the vindication of the just authority of the House of Commons, and to uphold the great principles of the constitution.'[a]

On division, upon June 4, Sir R. Peel's resolution was agreed to by a majority of one. At the next meeting of the House, Lord John Russell announced the intention of ministers to advise a dissolution of Parliament as soon as practicable. He also declared that, under existing circumstances, he should not introduce an important motion, of which he had given notice, respecting the Corn Laws. He added that it could not be denied that the only method of solving the doubt implied by the adoption of the aforesaid resolution was 'to let the country itself decide the question thus gravely submitted to them. Until this decision shall be given, I think it would not be proper that any further party struggle should take place.'[b] Whereupon

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[z] Mir. of Parl. 1841, p. 2133. [a] *Ib.* pp. 2137, 2142.
[b] *Ib.* pp. 2162–2164.

Sir R. Peel said that, a dissolution having been determined upon, he would throw no impediment in the way of completing the public business, provided it should take place with the least possible delay, and no measure be proposed meanwhile that was not imperatively required. It was also necessary, and according to precedent, that 'the new Parliament should be called together without delay.' He apprehended that there could be no constitutional objection to giving the House an assurance to this effect, inasmuch as in 1807, in 1820, and in 1831, the crown, in proroguing Parliament, intimated that 'a new Parliament' should be convoked 'forthwith,' or 'without delay.' Lord John Russell, under the peculiar circumstances of the case, gave these assurances; but he 'did not think, on ordinary occasions, any guarantee should be called for from, or given by, the advisers of the crown,' in respect to the exercise of this prerogative.[c] 1841.

Agreeably to promise, the ministry postponed the consideration of the Corn Law and Poor Law Bills; but they pressed forward a Bill for the improvement of the administration of justice in the Court of Chancery on the ground that all parties were agreed upon its principle. This Bill, however, proposed to create two new judicial offices, the patronage of which would be in the hands of the Lord Chancellor. Sir R. Peel, although favourable to the passing of the Bill, was unwilling that it should go into operation at this juncture. Accordingly, on motion of Sir E. B. Sugden, a clause was added to the Bill, postponing its operation for four months. Whereupon Lord John Russell refused to proceed with the Bill, declaring that this decision affixed a stigma on the Lord Chancellor, 'as unfit to advise the disposition of offices relating to the administration of justice;' that it was 'a violent infringement of

[c] Mir. of Parl. 1841, pp. 2165, 2166.

1841. the prerogative of the crown, and an unfair interference with the executive government.'[d] Sir R. Peel repudiated the idea that the action of the House in this matter was any infringement of the royal prerogative. He said that, in the present position of ministers, there was no other alternative than 'resignation or immediate dissolution;' in other words, a dissolution as soon as the exigencies of the public service would allow; and that ministers had no right to bring forward any contested motion whatever, or to ask of the House any act implying confidence in themselves, such as would be implied by the devolution of any new authority; that for the House to acquiesce in any such demand would be inconsistent with its former declaration of want of confidence in ministers; and that they, in preferring the same, did not 'do homage to the principles of representative government.' Lord John Russell's motion, to give the Chancery Bill a 'three months' hoist,' was then agreed to without a division.[e]

After completing the necessary business, Parliament was prorogued on June 22, and dissolved upon the following day. The 'cry' with which ministers went to the hustings was not that of confidence in themselves, but in favour of 'cheap bread,' and the modification of the Corn Laws.[f] This roused the agricultural interests, and a large majority against ministers was returned to the new House of Commons; they nevertheless determined to meet Parliament, upon the ground that they could not constitutionally infer the opinions of members from anything save their voices in Parliament. This determination, although undoubtedly a correct one,

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[d] Mir. of Parl. 1841, pp. 2227, 2228.

[e] *Ib.* p. 2231. Subsequently, in regard to the Bribery at Elections Bill, Ld. John Russell showed his willingness to carry out the understanding that all opposed measures, not being of urgent necessity, should be dropped. See *Ib.* pp. 2258, 2282.

[f] *Ib.* p. 2142; Ann. Reg. 1841, pp. 143–146.

placed them in the disagreeable position of advising a royal speech which could not fail to give dissatisfaction. 1841.

Upon the meeting of the new Parliament, which took place on August 19, amendments were proposed to the Address in both Houses, asserting a want of confidence in the advisers of the crown. In the Lords, the constitutionality of this course was defended by the Duke of Wellington. In the Commons, attention was drawn to the fact that, since the elections, Lord John Russell had informed his constituents that the ministry would 'take the first opportunity of asking for a clear and decided judgment upon their policy.' This intention, however, was forestalled by the proposed amendment. Sir R. Peel, in commenting upon the result of the elections, observed that it was 'a great constitutional principle, that the favour and support of the crown ought not to maintain, for a long and indefinite period, a government in existence against the will of the representatives of the people. It compromises the prerogatives of the monarchy so to retain power, because it exhibits those prerogatives without their just influence, it exhibits the House of Commons as wanting in its just influence, when it can thwart the measures and censure the acts, but cannot decide the fate of a ministry.' In reply, Lord John Russell complained of the insufficient reasons assigned on behalf of the motion, but had no fault to find with the motion itself. The proposed amendment was carried by large majorities in both Houses. The royal answer was as follows:—'Ever anxious to listen to the advice of the Parliament, I will take immediate measures for the formation of a new administration.' In communicating the same to the House of Commons upon August 30, Lord John Russell announced the resignation of ministers, adding the assurance that their duty to the sovereign and to the country had, in their conviction, rendered it incumbent

upon them 'to continue the struggle to the present moment.'[g]

18. *Sir Robert Peel's Second Administration.*—1841.

1841. Immediately upon the resignation of the Melbourne ministry, her Majesty sent for Sir Robert Peel, and charged him with the formation of a new administration. On September 8, the arrangements were complete, and the new writs were moved for in the House of Commons. On September 16, the prime minister made a statement to the House of his general policy. But it was very brief and reserved, and afforded no indication of the course he intended to pursue upon the great questions of commercial and financial policy that were agitating the public mind. He claimed for his ministry that time should be afforded to them to consider those measures which they might deem it expedient to submit to Parliament on these important subjects.[h] Sir Robert Peel had, in fact, undertaken a most difficult task. 'He was obliged to be at once a Conservative and a Reformer, and to carry along with him, in this double course, a majority incoherent in itself, and swayed, in reality, by immovable and untractable interests, prejudices, and passions.'[i] Elected as the champion of agricultural Protection, one of his first acts was to obtain the consent of his colleagues to a material change in the Corn Laws; and to the removal of the prohibition which existed against the importation of foreign cattle and meat. But this, while it failed to conciliate the advocates of free trade, was not effected without occasioning serious dissatisfaction amongst his own supporters. In fact the Duke of Buckingham resigned his seat in the cabinet rather than become a party to these measures; and it

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[g] Mir. of Parl. 1841, sess. ii. pp. 29-52, 68, 74, 164, 211, 222, 236. See Trevelyan's Life of Macaulay, v. 2, p. 89.

[h] Knight, Hist. of Eng. v. 8, p. 492; Mir. of Parl. 1841, sess. ii. p. 272.

[i] Guizot, Peel, p. 89.

was no easy matter to induce the remaining members of the government to accede to them.[j]

Twice, during the session of 1844, and before the complete development of his intended policy in respect to the Corn Laws, the existence of Sir Robert Peel's administration was seriously jeopardised by votes of the House of Commons. First, upon the question of the hours of labour in factories, and afterwards, upon the question of the sugar duties, a majority of the House affirmed certain propositions which were regarded by the ministry as injurious to the commercial prosperity of the country, and opposed to the principles of public policy which they were resolved to maintain. Upon each of these defeats, Sir Robert informed the House that, unless its decision were reconsidered and reversed, he should feel it to be his duty to resign office. This appeal was successful upon both occasions; and the government were sustained by the adoption of resolutions in accordance with their views.[k] 1844.

At length, in October 1845, a more alarming peril arose. The Irish potato crop had failed, and it became necessary to adopt measures to supply the immense deficiency thereby occasioned in the ordinary food of the people. On October 31, Sir Robert Peel laid before the cabinet a memorandum containing various suggestions calculated to meet this emergency. In the discussions which ensued upon this communication, it became evident, however, that grave differences of opinion existed, both as to the necessity for adopting any extraordinary measures, and as to the shape which such measures should assume.[l] The cabinet separated, to meet again in a week. Upon their reassembling, it appeared that a considerable majority of his colleagues differed from the premier, three only being willing to give him their support. Sir Robert, however, decided not to resign 1845.

[j] Peel's Mem. v. 2, p. 100. [k] See *post*, v. 2.
[l] Peel's Mem. v. 2, p. 148.

1845. his office, and thereby dissolve the government, but to afford his colleagues an opportunity of reconsidering the whole subject.[m] The discussions in the cabinet were accordingly resumed; and, upon December 2, Sir Robert Peel submitted to them a project for the settlement of the Corn Law question, but which failed to obtain their concurrence. He then, on December 5, waited upon the queen, and tendered his resignation.[n]

Whereupon her Majesty sent for Lord John Russell, and commissioned him to form a government. With a view to facilitate a just and comprehensive settlement of this momentous question, Sir Robert Peel conveyed, through her Majesty, an offer of his support, and that of those of his late cabinet who agreed with him, to any ministry that might be formed for the purpose of settling the question; provided their measure should be founded upon certain defined principles, and be framed in a cautious and conciliatory spirit. Lord John Russell acknowledged the liberality of this offer, but pressed for a further assurance that Sir Robert and his friends would pledge themselves to concur in a certain plan of adjustment, the outlines of which he offered to communicate. This Sir Robert Peel declined to do; objecting to 'concert, and to preliminary pledges, as calculated to dissatisfy the House of Commons, to embarrass all parties, and to diminish his ability to render efficient service.' While proffering a general support on the particular question, he would not 'relinquish his power of free and independent action.' In these conclusions, Lord John Russell expressed his concurrence.[o] But the Whig party were in a large minority in the Commons; and after several days spent in negotiations, it became evident that Lord John could not succeed. He failed,

[m] Peel's Mem. v. 2, p. 158.

[n] *Ib.* p. 222. Ld. Stanley, with others of his colleagues who differed from Sir Robert Peel, had authorised him to state that they would not undertake to form a government upon the principle of Protection. He therefore did not advise the queen to send for any of them. *Ib.* pp. 229–234.

[o] *Ib.* pp. 241, 242.

moreover, to obtain an agreement amongst his own friends in respect to the composition of his ministry, Lord Grey having decidedly opposed an appointment which Lord John Russell was desirous of making.[p] Accordingly, on December 20, he wrote to the queen, relinquishing the task. 1845.

Sir Robert Peel was then recalled to power. He agreed to resume the office of first minister without previous concert with any one, a course which he had formerly taken in 1834. He met the cabinet the same evening, and told them that, whether supported or not, he was firmly resolved to meet Parliament as her Majesty's minister, and to propose such measures as the public exigencies required. This determined conduct had the effect of bringing the waverers back to their party allegiance, and, with the exception of Lord Stanley, all his former colleagues consented to support the prime minister.[q] Immediately upon the assembling of Parliament, ministerial explanations of these transactions were given; and Sir Robert Peel boldly announced his intention to stand free from the trammels of party, declaring that he would not remain at the helm unless the ship of the state were allowed to pursue the course he thought she ought to take. He reserved to himself the marking out of that course, and claimed for himself the unfettered power of judging of those measures which he conceived it to be for the good of the country to propose.[r]

Sir R. Peel's conduct on this occasion, like that of the Duke of Wellington in regard to Roman Catholic emancipation, gave great offence to his party, who contended that it was a violation of one of the first principles of political morality.[s] The position occupied by the Duke of Wellington upon the question was still more emphatically impeached, as, while credit was given to Sir R. Peel for being an honest convert to free trade, his grace appears to have based his acceptance of the doctrine upon considerations of a different descrip-

[p] Peel's Mem. v. 2, p. 247. And see Trevelyan, Life of Macaulay, v. 2, pp. 160–169.

[q] *Ib.* pp. 249, 250.

[r] Hans. D. v. 83, p. 94.

[s] May's Const. Hist. v. 2, p. 74. For his own defence, see Peel's Mem. v. 2, pp. 163, 229, 311–325.

tion, namely, upon the assumed convenience of the crown in this emergency.[t]

By this speech he asserted his independence, not merely of his colleagues in office, but of the great party of which he was the acknowledged chief.

In due course, Sir R. Peel communicated to Parliament his plan of financial and commercial reform. It excited strong opposition from his quondam supporters, but, nevertheless, it received the sanction of a majority in both Houses. But the Nemesis was at hand. During the progress of the Corn Law Repeal Bill, another measure for the Protection of Life in Ireland, which, at an early period of the session, had received the assent of the Lords, was brought under discussion in the Commons, and, by a combination of parties hostile either to the ministry or to the Bill itself, was defeated. Foreseeing that this Bill, so essential to the maintenance of the public peace in Ireland, would be rejected by the hostility of a factious Opposition, Sir Robert Peel, on June
1846. 21, transmitted a memorandum to the cabinet upon the position of the government. He elaborately discussed therein the alternatives of resignation or dissolution of Parliament, and, if the latter course were taken, the proper ground upon which to appeal to the country. He summed up by expressing a strong opinion in favour of immediate resignation, as being the most desirable step for the interests of his party, of the crown, and of the whole community; and as being more creditable than the retention of office without power, or the advising of a dissolution with little prospect of securing a majority of members honestly and cordially concurring with the government in great political principles.[u] This memorandum Sir Robert Peel addressed, in the first instance, to the Duke of Wellington, and upon receiving his grace's reply—which, while coinciding, in the main,

[t] See Amos, Fifty Years of the Eng. Const. pp. 347–353.

[u] Peel's Mem. v. 2, pp. 288–297.

with his own views, differed somewhat as to the proper grounds for dissolving Parliament, should it be necessary to take that step—he circulated both papers amongst the cabinet ministers.[v] Sir R. Peel's suggestions met with unanimous approval. 1846.

On June 25, owing to a concerted union between the Whig and Protectionist parties for the purpose of displacing the government, the Irish Coercion Bill was rejected, on its second reading, by a majority of 73. Next day the ministry resigned.[w] In communicating the fact of his retirement from office to the House of Commons, Sir R. Peel stated that, had he failed to carry his measures of commercial policy, he would have advised the crown to dissolve Parliament, but, having succeeded in passing them, he could not consent to advise a dissolution for the mere continuance of his own administration in office, unless he could reasonably anticipate that it would insure him the support of a powerful party, united to him by a general concurrence of views on all great questions, a result which, at this juncture, he did not consider probable. Moreover, he thought that the country, after its recent excitement, stood in need of repose.

19. *Lord John Russell's First Administration.*—1846.

On July 6, 1846, Lord John Russell was sworn in as First Lord of the Treasury. His cabinet consisted of the then unusual number of 16 persons. 'He took office with a majority of 100, sitting opposite to him; and carried on the government with a minority during the remainder of the Parliament, which completed its seventh session in July 1847; but he did it for the advantage of the country, and with the full approbation and moral

[v] Peel's Mem. v. 2, pp. 298-308.

[w] In the following year the new ministry were themselves compelled, by the state of Ireland, to introduce a Coercion Bill, which, with the friendly assistance of Sir R. Peel, they passed into a law. See Martin's Pr. Consort, v. 1, p. 461.

support of a majority in Parliament,'[x] including Sir R. Peel and his friends.[y]

1850. In February 1850, he narrowly escaped defeat upon the question of agricultural distress, being sustained by a majority of 21 only, in a House of 530 members. On this occasion a change of ministry was anticipated, but did not occur. On June 17, 1850, a resolution, proposed by Lord Stanley in the House of Lords, condemnatory of the foreign policy of ministers, in relation to the affairs of Greece, was carried, by a majority of 37. This was met by a counter-resolution, proposed by Mr. Roebuck, in the Commons, approving of the whole foreign policy of government, which was carried, on June 28, by a majority of 46. However, on February 13, 1851, upon another Protectionist motion, proposed by Mr. Disraeli, they obtained a bare majority of 11, in a House of 548 members, and, on the 20th, were defeated, upon a motion of Mr. Locke King, on a question of the extension of the franchise. On February 22, Lord John Russell resigned. But after ineffectual attempts on the part of Lords Stanley and Aberdeen, and of Lord John Russell, in connection with Lord Aberdeen and Sir James Graham, to form a ministry, her Majesty sent for the Duke of Wellington, to take counsel from him in regard to this political emergency; and 'paused for a while before she again commenced the task of forming an administration.' At length, upon the advice of the Duke of Wellington, the Whig ministry were recalled to office.[z] On December 22 following, the ministry were weakened by the loss of Lord Palmerston, under circumstances which will be specially noticed in another chapter.[a] Explanations were given to the House of Commons, of this event, by Lord John Russell,

[x] Mr. Disraeli, Hans. D. v. 191, p. 1704; and see p. 1729.

[y] Earl Russell's Recollections, p. 243.

[z] Martin's Pr. Consort, v. 2, pp. 344–354. Hans. D. v. 114, pp. 1033, 1075. The popular cry at this juncture was in favour of a Coalition Ministry. See Stockmar's Mem. v. 2, p. 446.

[a] See *post*, v. 2.

in the debate upon the Address, at the commencement of the session, on February 3, 1852. A few days afterwards, the ministry were defeated upon an amendment, proposed by Lord Palmerston, to the motion for leave to bring in a Bill to regulate the 'local militia.' The amendment consisted in the substitution of the word 'general' for 'local.'[b] It was carried, on February 20, by 136 votes to 125. On February 23, their resignation was announced to both Houses. Her Majesty had offered them the alternative of a dissolution of Parliament, but the cabinet were unanimous in the opinion that it was not advisable to have recourse thereto.[c] 1852.

20. *Lord Derby's First Administration.—Feb.* 1852.

Instead of sending for Lord Palmerston, as might have been anticipated, her Majesty commissioned the Earl of Derby to form a ministry. He was very reluctant to take office;[d] but nevertheless succeeded in the undertaking, and on February 27 the new premier explained the intended policy of his cabinet in the House of Lords. This administration was confessedly in a minority, in the House of Commons, upon the great party questions.[e] But they struggled through the session in which they had taken office, with the intention (which, for constitutional reasons, was hinted, rather than expressed) of dissolving Parliament in the ensuing autumn, and of then shaping their course of policy on the question of Free Trade, and the Corn Laws, according to the general sentiment of the country, as it might be expressed in the new Parliament. But they were not permitted to take this course without encountering strenuous opposition. On March 15, Lord John Russell 1852.

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[b] See Ashley, Life of Palmerston, v. 1, p. 333. Martin's Pr. Consort, v. 2, p. 433.

[c] *Ib.* v. 2, p. 441. Hans. D. v. 150, p. 1076.

[d] See Hans. D. v. 214, p. 1939.

[e] Martin, Pr. Consort, v. 2, p. 441. Hans. D. v. 119, p. 914.

1852. warmly contended that the proposed delay in dissolving Parliament, and the attempt to conduct public business by Lord Derby's ministry, whilst in an admitted minority in the House of Commons, was unconstitutional and unprecedented.[f] He was followed, at greater length, and to the same effect, by Sir James Graham. Afterwards, Mr. Gladstone and Lord Palmerston urged that, constitutionally, the new ministry were bound to give a distinct assurance that, as soon as the necessary business before Parliament could be despatched, the crown should be advised to appeal to the country.[g] In the House of Lords, similar views were expressed by the Duke of Newcastle.[h] Lord Derby, in reply, said that he did not rely on the conduct of Mr. Pitt, in 1784, as a precedent, not regarding it as a very analogous case; but he defended his position by referring to the course adopted by Sir R. Peel, in 1835, when he was in a minority, in the House of Commons, upon his assumption of the reins of government, and failed to obtain a majority upon a dissolution of Parliament. He sustained several serious defeats in the new House, yet he would not resign, saying, 'I hold there is nothing unconstitutional, in the post I fill, and in the fulfilment of my duty, to persevere in the discharge of those duties to which my sovereign has called me, in defiance of the majority that is against me upon any abstract question, and in defiance of any declaration on the part of the House of Commons that I ought to bring forward a particular question, and settle it in a particular manner. I will perform my duty until the House shall, by its vote, refuse its sanction to some measure of importance which I think necessary to submit to its consideration.' Upon this constitutional doctrine, laid down in 1835, Lord Derby declared that he was prepared to abide in 1852. He could not consent to

[f] Hans. D. v. 119, p. 1067. [g] *Ib.* pp. 1090, 1105, 1111. [h] *Ib.* p. 1267.

resign, as he and his party had not sought office, or brought about his accession to it; neither would he give any distinct pledge as to the time when he would advise a dissolution. He expressed, however, an anxious desire that an appeal to the country should be made at the earliest period possible, consistently with the public welfare. Furthermore, he said that he thought the new Parliament should be assembled before the close of the coming autumn, to 'pronounce its definitive and final decision.'[i] With this explanation, the leading statesmen in the House of Lords declared themselves to be satisfied. A similar announcement was made in the House of Commons, on the same day, by Mr. Disraeli, in reply to an enquiry by Lord John Russell. On March 22, Lord John Russell professed himself content with these explanations, and expressed his willingness to aid the government in completing the necessary business without delay.[j] The prorogation took place on July 1, and the dissolution of Parliament upon the same day. At the close of the session, Lord Derby 'gratefully acknowledged' that his ministry had met 'with no factious opposition,' and had 'encountered nothing but a fair, legitimate, and constitutional opposition in the other House of Parliament.'[k] The new Parliament assembled on November 4. The returns to the new House of Commons left the balance of parties very much as before, with no decisive working majority on either side.[l] But they indicated the opinion of the country to be in favour of a continuance of the new commercial policy, and opposed to any return to the principle of Protection. Accordingly, on November 11, in the debate upon the Address, in answer to the speech from the throne, Lord Derby stated that he should bow to the decision of the country, thus unmis- 1852.

[i] Ld. Derby's speech, Hans. D. v. 119, p. 1274.

[j] Hans. D. v. 119, p. 1400.

[k] *Ib.* v. 122, p. 1408.

[l] Martin's Pr. Consort, v. 2, pp. 453, 470.

1852 takably expressed, and should give his unequivocal adhesion to that policy.[m] Notwithstanding this frank avowal, the combination of parties proved too strong for the administration, and upon the introduction of the budget by the Chancellor of the Exchequer (Mr. Disraeli), a debate ensued upon the whole financial policy of the government, which resulted in a defeat of the ministry, on December 16, by a majority of 19. Ministers were strongly urged, on this occasion, to remain in office. They were assured, even by leading opponents, that this vote—being on a question of finance—did not authorise their resignation; but, being in a minority in a Parliament elected under their own auspices, and having no assurance of support from the majority of the House of Commons upon their general policy, they deemed it right to retire.[n] Next day their resignation of office was announced to both Houses of Parliament.

21. *Lord Aberdeen's Administration.—December* 1852.

In hopes of obtaining a strong and durable administration, which should be at once conservative and reforming, the queen sent for Lord Aberdeen, and also wrote to Lord John Russell, expressing her reliance upon his patriotism, and his willingness to co-operate in the formation of a coalition government. In this her Majesty was not disappointed.[o] On December 27, 1852, Lord Aberdeen informed the House of Lords that he had succeeded, in conjunction with Lord John Russell, in forming a Coalition Ministry, of Conservatives and Liberals, who would agree in 'the maintenance and prudent extension of Free Trade and the commercial and financial system established by the late Sir Robert Peel.' And he proceeded to state the outlines of the

[m] Hans. D. v. 123, p. 53.

[n] Mr. Disraeli, Hans. D. v. 191, p. 1702. *Ib.* v. 205, p. 1659.

[o] Trevelyan, Life of Macaulay, v. 2, p. 332. Martin's Pr. Consort, v. 2, p. 482.

policy intended to be pursued by the new administration. Both Houses were then adjourned until February 10. On that day, Lord John Russell, as leader of the government in the House of Commons, explained the measures intended to be submitted to Parliament. These measures were received, by both Houses, in a fair and candid spirit. The result was that a mass of legislation, unusual in amount as well as in value, was initiated and successfully carried through by this government.[p]

The Aberdeen ministry remained in office until 1855. For a considerable period before their final overthrow, discontent had prevailed in the cabinet; they had been bereft of genuine parliamentary support, and had been subjected to frequent defeat, in the House of Commons, 'upon cross motions of every description.' This greatly impaired their strength and efficiency.[q] Their downfall was ultimately occasioned by internal dissensions and notorious incompetency to meet the crisis of the war with Russia. It was preceded by the unexpected secession of Lord John Russell himself, who resigned on January 23, 1855, on account of his inability to concur with his colleagues in resisting a pending motion of Mr. Roebuck, for the appointment of a committee to enquire into the conduct of the war in the Crimea.[r] This motion was carried, on January 29, by a large majority. It was regarded as a declaration of want of confidence in the government. Accordingly, on February 1, the resignation of ministers was announced to both Houses. 1855.

The announcement was made in the Commons by Lord Palmerston, the Home Secretary. The resignations had actually taken place before the meeting of the House on the previous sitting (January 30), and would have been formally made known upon the moving of the adjournment on that day, on account of 'the present

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[p] Martin's Pr. Consort, v. 2, pp. 487, 503.

[q] Mr. Sidney Herbert, Hans. D. v. 130, p. 1000. Martin's Pr. Consort, v. 3, p. 90.

[r] See *post*, v. 2.

1855. state of public affairs,' but for the accidental circumstance of the Lords having adjourned over that day. The premier having a seat in the Lords, it was necessary that the formal announcement of resignation should proceed first from him.[s]

After the premier had communicated this intelligence to the Lords, the Duke of Newcastle took the unusual course of explaining to the House his personal motives for his conduct in office, and for his resignation. On February 5, Lord John Russell (in the Commons) entered into similar explanations, in answer to certain remarks from the Duke of Newcastle on the aforesaid occasion. Meanwhile, ineffectual attempts had been made, both by Lord Derby and by Lord John Russell, at the command of the queen, to form a new administration;[t] and Lord John Russell took this opportunity to explain the causes of his failure. This elicited some observations from the Chancellor of the Exchequer; but no debate arose upon either occasion.

22. *Lord Palmerston's First Administration.*—1855.

On February 6, 1855, both Houses were informed that her Majesty had empowered Lord Palmerston to form a ministry. In the Commons (upon the motion to adjourn), a short debate took place, in which dissatisfaction was expressed at the delay in the formation of a new ministry, and hints were thrown out that, if further delay occurred, it might become expedient to address the crown on the subject. On the 8th, Lord Granville informed the House of Lords that Lord Palmerston had succeeded in the task entrusted to him. His lordship briefly explained that no change of policy was intended by the incoming administration, which was, in fact, a reconstruction of the preceding one, with some partial changes, and re-distribution of offices.[u] And

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[s] Hans. D. v. 136, pp. 1233, 1261.

[t] See Martin's Pr. Consort, v. 3, p. 202.

[u] Hans. D. v. 136, p. 1330. Ashley, Life of Palmerston, v. 2, c. iii. Martin's Pr. Consort, v. 3, p. 208.

then Lord Derby entered into explanations in regard to his own failure to construct a cabinet, which gave rise to a short debate. But the ordinary ministerial explanations were deferred until the appearance of Lord Palmerston in the House of Commons, after his re election. Until this took place, with the partial exceptions above noted, there was no political discussion in either House, although the House of Commons sat, for the transaction of ordinary and unopposed business, on January 30, February 2, 5, 6, 7, 8, and 9, when they adjourned until the 16th. Meanwhile, the Chancellor of the Exchequer (Mr. Gladstone), the Commissioner of Public Works (Sir W. Molesworth), and the President of the Board of Control (Sir C. Wood) resumed their offices as members of the new administration. Nevertheless, while taking part in the debates, they refrained from asserting their official position during this interregnum, and in the absence of their chief. In proposing a vote on account in supply, on behalf of the Army, upon February 7, the Chancellor of the Exchequer said: 'I presume the government are of opinion that it would be the wish of the House that we should not proceed with any business, except such as is of absolute necessity, in order that those who have accepted office, or who have changed their offices, in her Majesty's government—at least the principal members of it—may have an opportunity of submitting themselves to their constituents for their re-election.'[v] Upon the re-assembling of the House, on February 16, Lord Palmerston was present, and entered into the ordinary ministerial explanations. He endeavoured to persuade the House to forego their determination to enquire, by a committee of their own, into the condition of the Army before Sebastopol, but he was compelled to yield, upon this point, to the determination of the House; although this

1855.

[v] Hans. D. v. 136, p. 1309.

concession led to further changes in the composition of the ministry.

On February 22, it was announced that Mr. Gladstone, Mr. Sidney Herbert, Sir J. Graham, and (afterwards) Mr. Cardwell, had retired from the new cabinet; they were speedily replaced, however, by Sir G. C. Lewis, Lord John Russell, Mr. Vernon Smith, and Lord Stanley of Alderley. The ex-ministers made their explanations on the following day, alleging their strong objections to the proposed committee of enquiry into the state of the Army before Sebastopol as the ground of their retirement. With the consent of the premier, and his new colleagues, the committee was appointed.[w] On July 16, Lord John Russell resigned office, on account of animadversions in Parliament, and out of doors, upon his conduct as minister plenipotentiary at Vienna, Sir E. Bulwer-Lytton having given notice of motion for a vote of censure upon him.[x]

By a resolution of the House of Commons, on
1857 March 3, 1857, the Palmerston ministry were censured for the 'violent measures resorted to at Canton in the late affair of the *Arrow*.' The House of Lords, however, approved of their conduct and policy upon the Chinese question, and upon other questions the House of Commons gave them a general support. They therefore resolved to appeal to the country by a dissolution of Parliament. They were influenced in this determination by the probability that it would be difficult to form a strong government to work with the existing House of Commons, which had already lasted five years, within which period there had been three different administrations.[y] The Chinese question excited very little interest at the hustings, but the name of 'Palmerston' was the rallying cry in almost every constituency. The result of the elections was the return of an increased majority of members to support the administration of that popular nobleman.[z]

But ere long a still more difficult bone of contention

[w] Hans. D. v. 136, pp. 1733, 1865, and see further as to enquiry and results, *post*, Chapter on Army and Navy.

[x] See *post*, v. 2.

[y] Hans. D. v. 144, pp. 1885, 1894.

[z] Ashley, Life of Palmerston, v. 2, p. 136.

arose. At the commencement of the year 1858, there was much excitement in England and France in consequence of the discovery of a nefarious plot, against the life of the Emperor of the French, by one Orsini, a foreign refugee resident in London. This occasioned a diplomatic correspondence between the two governments, and led to the introduction, by Lord Palmerston, of a Bill into Parliament to amend the law in relation to the crime of conspiracy to commit murder. But certain expressions in a despatch from the French minister for Foreign Affairs, impugning the sacred right of asylum, and the adequacy of the existing law applicable to the case, gave offence to the House of Commons. While they were willing to agree to any amendment that might be required to satisfy the ends of justice, they disclaimed the right of the French government to dictate upon a matter of internal legislation; and they considered that the objectionable portions of the despatch in question should have been formally answered by the Foreign Secretary before the initiation of further legislation upon the subject. These opinions were embodied by Mr. Milner Gibson in an amendment which, on February 19, he proposed to the second reading of the Bill, and which was carried by a majority of 19 (234 to 215) against the government.[a] On this occasion it was clear that the feeling of the country concurred with the majority of the House of Commons; and notwithstanding the general support afforded by the House to the ministry, and the fact that the only party in Parliament which was capable of assuming office was neither strong in numbers nor high in popular favour, it was evident that a vote of censure so emphatic left the ministry no alternative but to resign.[b] Accordingly, at the next 1858.

[a] Ashley, Life of Palmerston, v. 2, p. 142. 'To the measure itself, apart from the circumstances under which it was offered, no valid objection could be raised; and three years later its provisions were silently admitted to a place in our revised criminal laws.'—May, Const. Hist. v. 2, p. 304: 24 & 25 Vict. c. 100, § 4.

[b] Ann. Reg. 1858, p. 50. But while

meeting of the House, Lord Palmerston announced their retirement from office.

23. *Lord Derby's Second Administration.*—1858.

1858. On February 22, 1858, it was intimated that the Earl of Derby had been sent for and commissioned to form a new administration. Although unable to command a majority in the House of Commons,[c] the noble earl consented to take office, and succeeded in constructing an efficient cabinet. On March 1, he made his ministerial statement in the House of Lords, and both Houses then adjourned for eleven days, to admit of the new ministers, in the Commons, going for re-election. Shortly after this recess (on March 15), Lord Malmesbury (the Foreign Secretary) laid on the table of the House of Lords a correspondence that had taken place between her Majesty's ministers, since their accession to office, and the French government, which correspondence, he stated, had terminated in all honour and good feeling on both sides.

On May 11, a breach was made in the ministerial ranks by the resignation of Lord Ellenborough (the President of the Board of Control), on account of complaints in Parliament that he had unwisely and precipitately published a secret dispatch to the Governor-General of India, animadverting upon a proclamation about to be issued in India.

On March 1, 1859, Mr. Walpole (the Home Secretary) and Mr. Henley (the President of the Board of Trade) informed the House of Commons that they had retired from the ministry, on account of their objections to some of the provisions of the government Reform Bill.

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the vote of censure was the ostensible cause, Sir G. C. Lewis, who was Chancellor of the Exchequer at the time, says 'there is no doubt that Ld. Palmerston resigned on account of the Reform Bill.' Lewis's Letters, p. 426.

[c] See Hans. D. v. 154, p. 111. In fact, only one-third of the members of the existing H. of Commons were supporters of the government. *Ib.* p. 123.

Owing in part to the forbearance of their political opponents, and also to a general disposition, both in and out of Parliament, to give the Conservative ministry a fair trial, they were permitted to carry on the government without obstruction, or factious opposition, until the introduction of this measure. The scheme of Reform propounded on the part of the Conservatives excited, however, great hostility for various and widely different reasons. Lord John Russell skilfully availed himself of the prevalent dissatisfaction to forestall the committal of the Bill—at which stage the ministry expressed their readiness to consider any proposed amendments of detail, and to endeavour to make their measure generally acceptable—by moving an amendment upon the second reading, condemnatory, in general terms, of its principle. On March 31, this amendment was carried against the government. 1859.

On April 4, ministers announced their intention of appealing to the country by a dissolution of Parliament. In communicating this intention to the House of Lords, the premier adverted to some remarks which had fallen from Lord Palmerston, on March 25, in the other House, to the effect that the ministry, notwithstanding this defeat, 'should be permitted neither to retire, nor to dissolve, nor to withdraw the Bill,' but should remain in their places, 'to do our bidding.'[d] Repudiating the idea that he could consent to occupy such an ignominious and unconstitutional position, his lordship proceeded to enquire where any authority could be found to justify any restriction upon the prerogative of the crown to dissolve Parliament at any time and upon any occasion. He asserted that ever since the memorable case of 1784—'which recoiled upon the heads of its authors—there has been no attempt to interfere with

[d] Hans. D. v. 153, p. 882. Ashley, Life of Palmerston, v. 2, p. 151. Afterwards Lord Palmerston disclaimed this construction of his remarks. See *post*, p. 231. And see Hans. D. v. 191, p. 1703.

1859. the prerogative of the crown to dissolve Parliament when and for what reason it thought fit.' He then declared that, with the unanimous consent of his colleagues, he had assumed the responsibility of advising the queen, unless she preferred to accept their resignation of office, to dissolve the present Parliament, 'so soon as it could be done consistently with the discharge of those duties, and the performance of that amount of business which is indispensable before a dissolution can take place;' and that her Majesty had been pleased to sanction this appeal to the judgment and decision of the people. But in regard to the issue upon which the ministry would go to the country, Lord Derby distinctly stated that it should be wholly irrespective of the merits of their Reform Bill, or of the general question of Parliamentary Reform The appeal would be made 'on a much larger and broader question,' as to whether the country would support the ministry in whom the sovereign had bestowed her confidence, and who had endeavoured, by their public conduct, to deserve the confidence which the House of Commons had withheld.[e] In reply, Lord Granville, as leader of the Opposition, complained of Lord Derby for not stating 'exactly the policy upon which the appeal' to the country was to be made.[f] On the same day, a similar statement was made to the House of Commons by the Chancellor of the Exchequer (Mr. Disraeli). He remarked that, 'ever since the commencement of the session, the government had found itself frequently in minorities, and that, too, in many instances, on subjects of no mean importance.' But, while regarding their position as a painful one, they had hitherto refrained from making it the subject of a communication to the House, for various reasons, arising out of the state of parties, of the foreign relations of the crown, and of their desire to fulfil their

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[e] Hans. D. v. 153, pp. 1286–1291. [f] *Ib.* p. 1298.

pledge to introduce a Reform Bill. But they considered 1859
the vote on the second reading of that measure to be a censure upon the government, which virtually deprived them of all authority. They had accordingly advised the queen to dissolve Parliament, in hopes that, by 'recurring to the sense of her people, a state of affairs might be brought about which might be more conducive to the public interest.' He characterised the intended dissolution as an 'appeal to the country on our personal position.'[g] In reply, Lord Palmerston acknowledged the right of the government to advise the dissolution, saying, 'we recognise the right of the crown upon any occasion to appeal from the House of Commons to the country. We may think it more or less advisable to make that appeal, but when such an intention is announced, I am persuaded that this House will concur with government in accelerating as much as possible the moment for dissolving,' with the understanding 'that Parliament must meet at the earliest moment at which the writs are returnable.' He also admitted that 'the government may say that the question put to the country is whether it has entire confidence in them, or whether it prefers any other combination of men; although he contended that practically the question of Reform would be the issue that the country would decide.[h]

On April 6, Lord Palmerston entered into personal explanations in reply to what fell from Lord Derby on the 4th instant. He denied the construction put by the premier upon his remarks on a former occasion, and declared that no one who knew anything of the British constitution could question the prerogative of the crown, upon the advice of responsible ministers, 'to dissolve Parliament at any period of the year, or in any state whatever of the public business that they may think a fit opportunity of so doing.' Nevertheless, 'it is obvious that the advisers of the crown cannot, without great

[g] Hans. D. v. 153, pp. 1302–1307. [h] *Ib* pp. 1310, 1311.

1859. inconvenience to the public service, recommend the sovereign to dissolve Parliament, and carry that recommendation into effect, unless the House of Commons makes itself a party to the transaction, accelerates its proceedings, and concurs in the temporary expedients which are necessary in order to place the public business in a position in which a dissolution would not be attended with inconvenience.' For it would have been perfectly constitutional for the House, under existing circumstances, to refuse to be a party to the abrupt and premature termination of the session, and to interpose their advice between that tendered to her Majesty by her responsible ministers and the act of dissolution, by an 'address to the crown, praying that it would neither dissolve nor prorogue Parliament until the House had had the opportunity of considering another Reform Bill, to be presented by the Government;' or 'to address the crown to dismiss the present ministers.'[i] His lordship, however, would not advise the House to adopt either of these courses, but thought it far better to 'accept the challenge of her Majesty's ministers, and appeal to the sense of the people' without delay.

Some further discussion ensued as to the issue upon which the government intended to go to the hustings. The Opposition persisted in asserting that the issue for the country to decide was the propriety of their Reform policy; but the Home Secretary (Mr. Sotheran-Estcourt) maintained that 'the real question at issue for the country to consider was whether the government should be carried on by the present ministers, or whether power should be transferred to other hands.'[j] The prorogation of Parliament took place on April 19, 1859, and the dissolution on the 23rd. The new Parliament assembled on May 31. On the motion for an Address

[i] Hans. D. v. 153, p. 1415. And see Sir G. Grey's remarks on this point, p. 1419.

[j] *Ib.* p. 1429. This was in fact the issue which the Derby Government put to the people, and which was decided against them. See *Ib.* v. 154, pp. 111, 147.

in answer to the speech from the throne, an amendment was proposed, in the House of Commons, on June 7, representing that the present advisers of her Majesty did not possess the confidence of this House, or of the country. After three nights' debate, the amendment was carried, by a majority of 13. The division upon this question was the largest on record. There were 638 members present out of 654.[k] 1859.

At the division on April 27, 1866, on the second reading of the Reform Bill, there were present 636 members, including the Tellers and the Speaker. The increased attention of members to their parliamentary duties within the present century, may be inferred from the fact that, at a great party division, in 1804, when 493 members were present, including the Speaker, it was said to have been 'the fullest House that was ever known,'[l] which was not strictly correct, as on one occasion, in 1742, 508 were present. Mr. Speaker Abbot refers to a division on April 24, 1812, when the ayes were 300 and the noes 215, as 'probably the largest number that ever attended on any division.'[m] The largest division in the House of Lords is said to have included about 310 Peers.[n]

The ministry thereupon immediately resigned office; but their resignation was not formally announced to both Houses until June 17.[o] At this juncture the queen first commissioned Earl Granville to form a ministry, but as soon as that nobleman found that a better and a stronger arrangement might be made, he at once requested her Majesty to absolve him from the task. In fact, before the new Parliament met, and in anticipation of the speedy downfall of the Derby ministry, the two rival chiefs of the Whig party, Lords John Russell and Palmerston, had come to an agreement that whichever of the two was charged with the formation of a government, should receive the co-operation of the other. Her Majesty knew nothing of this un-

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[k] Hans. D. v. 154, p. 416. Ann. Reg. 1859. Chronicle, p. 81.

[l] Life of Earl Minto, v. 3, p. 348.

[m] Colchester Diaries, v. 2, pp. 123, 377.

[n] Hans. D. v. 188, p. 654. Yonge, Life of Ld. Liverpool, v. 1, p. 230.

[o] Hans. D. v. 154, pp. 422, 423, 431.

derstanding, and had supposed either of these noblemen would have been willing to serve under Lord Granville. Lord Palmerston at once agreed to do so. But Lord John Russell was not so tractable. This led to Lord Granville's failure. Whereupon the queen transferred her commission to Lord Palmerston.[p]

24. *Lord Palmerston's Second Administration.*—1859.

1859. On June 17, the Houses were informed that Lord Palmerston had been empowered to form an administration. On June 22, the new writs were ordered; and an adjournment took place until the 30th, on which day the new premier made his ministerial statement to the House of Commons.

This ministry lasted for upwards of six years, and was finally broken up by the death of Palmerston, which occurred on October 18, 1865, being within two days of the completion of his eighty-first year. During this period his lordship's conduct of public affairs in the lead of the House of Commons was admirable, and wholly free from a certain brusque and dictatorial manner which characterised his former leadership.[q]

25. *Earl Russell's Second Administration.*—1865.

1865. A few days after the decease of the veteran Lord Palmerston, Earl Russell, the Secretary of State for Foreign Affairs, and the most experienced and prominent member of the administration, who had already once before filled the office of premier, was called upon by the queen to assume that position. The lead of the House of Commons was assigned to Mr. Gladstone, the Chancellor of the Exchequer. A few minor alterations were made in the *personnel* of the government, and two new members introduced therein, namely, Mr. Forster,

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[p] Hans. D. v. 154, p. 457. Ashley, Life of Palmerston, v. 2, p. 154. Martin's Pr. Consort, v. 4, pp. 443, 452.

[q] *Ib.* v. 2, pp. 147, 203.

as Under-Secretary of the Colonies, and Mr. Göschen, first as Vice-President of the Board of Trade, and, after a few weeks, as Chancellor of the Duchy of Lancaster, with a seat in the cabinet.[r] Otherwise, the political character of the new ministry resembled that of Lord Palmerston, although in the loss of that gifted and popular statesman it failed to acquire the same amount of confidence and respect from the various parties into which the House of Commons was divided. Three months before Lord Palmerston's death, a general election had taken place, and the returns to the new Parliament appeared to have somewhat added to the strength of ministers, and to have given them a majority of about seventy over their political opponents.

A Reform Bill was promised in the speech from the throne, at the opening of Parliament. Some delay occurred in the production of this measure, and when at length it was brought in, it consisted of a part only of the government scheme, in the shape of a Bill for the reduction of the franchise. It was stated that the necessary complement, of a Bill for the re-distribution of seats, would not be introduced until the following session. This arrangement produced great dissatisfaction in the House, and ministers were at length obliged to bring in their Seats Bill without further delay, in order that the complete scheme of Reform might be discussed in committee of the whole House. After several minor discomfitures on the question of Reform, ministers were defeated on May 28, on a motion, which was carried against them, for an instruction to the committee on the Bill to provide therein for the better prevention of bribery and corruption at elections.[s] They were again defeated, in committee, on June 18, by a resolution to amend the 5th clause (concerning the occupation franchise for borough voters) by striking out 1866.

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[r] Ann. Reg. 1865, p. 159. [s] Hans. D. v. 183, p. 1344.

the words 'clear yearly,' with a view to the insertion of 'rateable' instead thereof.[t] Regarding this decision as equivalent to a vote of want of confidence, ministers immediately tendered their resignations. The queen was, at the time, at Balmoral Castle, in Scotland, a circumstance which occasioned some delay. But, on learning the intentions of ministers, her Majesty expressed her desire that they would not persist in retiring from office in the existing state of public affairs, especially upon the Continent—where a war between Austria, Italy, and Prussia was on the eve of taking place—and declared her opinion that a mere defeat upon a question of detail, which was capable of adjustment, did not call for such serious consequences. In deference to this opinion the matter remained in abeyance until the queen, on her return from Scotland, should be able to confer personally with her ministers. On June 26, the premier and the chancellor of the exchequer had an audience with the queen, at Windsor Castle, at which her Majesty was informed that ministers persevered in tendering their resignations.[u] They were accordingly accepted; and full explanations of the grounds of their retirement from office were given, on that day, to both Houses of Parliament. Earl Russell's statement, in the House of Lords, led to speeches from Earls Derby, Granville, and Grey, upon the ministerial crisis. Mr. Gladstone's statement, in the House of Commons, elicited no remarks from any other member.

26. *Earl of Derby's Third Administration.*—1866.

1866 On June 28, the House of Commons was informed that the Earl of Derby had received the queen's com-

[t] Hans. D. v. 184, p. 639.

[u] A vote of confidence was about to be moved in the House of Commons, with a view to re-establish the ministry, when the mover received a letter from Earl Russell announcing his resignation. May, Const. Hist. ed. 1871, v. 3, p. 433. See Earl Russell's Recoll. p. 259.

mands to form an administration.[v] Adjournments of both Houses took place from time to time, until July 6, when new writs were moved for in the House of Commons on behalf of the incoming administration. But no observations were made upon this occasion. On Monday, July 9, however, the new premier, the Earl of Derby, made his ministerial statement to the House of Lords. He said it had been the wish of the queen, and his own endeavour, that he should be able 'to form a government composed, no doubt, in the main, from the Conservative party, but formed on an enlarged basis, capable of including within it some persons either opposed to us, or who had been supporters, or even members, of the late government.' By 'enlarged basis' his lordship meant, 'enlarged, not as to principles, but as to persons,' and not 'a government of coalition;' by which he understood 'a government of men of different parties, in which each, to a greater or less extent, sacrifices his individual opinions for the purpose of obtaining united political strength.' Being unsuccessful in his attempt to obtain any such 'extraneous aid,' Earl Derby proceeded to form a ministry from the ranks of the Conservative party, which was accepted by the queen. His lordship then explained the general principles upon which he proposed to carry on the government. He was followed by Earl Russell, who commented upon one or two topics of the premier's speech; but no further discussion took place.[w] After the return of the new ministers, who had vacated their seats in the House of Commons by accepting office, the business of the session was brought to a speedy termination, and Parliament was prorogued upon August 10. Although the Conservative party was in an acknowledged minority in the House of Commons, ministers met with no factious

1866.

[v] But it was on Tuesday, June 26, that the queen intimated her desire to the Earl of Derby that he should form a ministry. Hans. D. v. 184, p. 734.

[w] *Ib.* pp. 726-750.

or ungenerous opposition in winding up the public business. Early in the ensuing session, ministers were thwarted in an endeavour to induce the House of Commons to approve of an ingenious expedient for settling the basis of a new Reform Bill, by adopting a series of resolutions, upon which an acceptable scheme of reform might be framed. But this proposal was regarded as inconsistent with the true doctrine of ministerial responsibility for all measures to be submitted to Parliament, and they were compelled to abandon it; they then introduced a Reform Bill, the fate of which is recorded in a subsequent chapter.[x]

27. *Mr. Disraeli's First Administration.*—1868.

1868. In the Session of 1868, the newly appointed ministry of Mr. Disraeli—after sustaining a minor defeat upon a Government Bill to transfer certain fines and fees in Ireland to the Consolidated Fund[y]—were defeated, on April 3 and 30, upon a vital question raised by Mr. Gladstone in regard to the disestablishment of the Irish Church. On the ground that this vote had 'altered the relations between her Majesty's government and the present House of Commons,' and required that ministers should consider their position, Mr. Disraeli obtained an adjournment of the House from Thursday to Monday.[z] On Monday (May 4) both Houses were informed that ministers had advised the queen to dissolve Parliament, 'and take the opinion of the country as to the conduct of her ministers, and the question of the Irish Church;' but had also stated, 'that if her Majesty were of opinion that the question at issue could be more satisfactorily settled, or the just interests of the country more studied, by the immediate retirement' of ministers, they would resign at once. 'Her Majesty was pleased to express

[x] See *post*, v. 2.

[y] Hans. D. v. 190, pp. 1227-1234.

[z] *Ib.* v. 191, p. 1679.

her pleasure not to accept the resignation of her ministry, and her readiness to dissolve this Parliament as soon as the state of public business would permit.' Whereupon Mr. Disraeli 'advised her Majesty that, although the present constituency was no doubt as morally competent to decide upon the question of the disestablishment of the Church as the representatives of the constituency in this House, still it was the opinion of ministers that every effort should be made with a view that the appeal, if possible, should be directed to the new constituency which the wisdom of Parliament created last year;' adding, that if ministers had the cordial co-operation of Parliament, the dissolution might take place in the autumn.[a]

Dissolution of Parliament in 1868.

In the House of Lords, Earl Grey denied the right of ministers, on being defeated in the Commons, to ask the crown for a dissolution of Parliament, unless there was strong reason to believe that the House of Commons had misrepresented the feeling of the country. In reply, it was contended by Lord Chancellor Cairns, that the present Parliament, having been elected under a prime minister whose opinions in regard to the Irish Church were known to have been adverse to those recently expressed by a majority of the House of Commons, the vote of the House on that question presented exactly one of those occasions on which ministers might fairly advise a dissolution.[b]

In the House of Commons, Mr. Disraeli asserted that 'practically it had been held to be the constitutional right of a minister, upon taking office, to advise the crown to dissolve a Parliament elected under the influence of his political opponents;' that the Earl of Derby had waived that right upon his appointment, in 1866, because 'the Parliament itself was then but recently elected, and there were other reasons of gravity

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[a] Hans. D. v. 194, pp. 1686, 1705, 1794. [b] *Ib.* pp. 1687–1689.

1868. and principle which induced him to hope that he might be able to carry on affairs with the present Parliament.' At the close of 1867, Earl Derby, having succeeded in passing the Reform Act, might have claimed the right 'to take the opinion of the country upon the conduct of ministers in carrying this measure.' But he was deterred from doing so because there were certain supplementary measures connected with the settlement of the Reform question which still remained to be enacted. In the present session, Lord Derby resigned, and was replaced in the premiership by Mr. Disraeli, the policy of ministers continuing unchanged. Under these circumstances, Mr. Disraeli claimed that the original right to advise a dissolution of Parliament had devolved upon him. He added, that the approval generally accorded to the administration of public affairs by the new ministry was such, that they felt free to appeal to the country, and had no fear of the result. He had accordingly advised a dissolution upon the question whether or not the Church in Ireland should be disestablished, having 'a profound conviction that the opinion of the nation does not agree on this subject with the vote of the House of Commons.'[a]

In reply, Mr. Gladstone denied the right of a ministry to 'inflict' a 'penal' dissolution upon the country, for no other cause than its 'sitting in a Parliament that was called into existence before the ministry itself.' He argued that there were two conditions necessary to justify an appeal to the country by a government whose existence is menaced by an adverse vote in the Commons. 'The first of them is, that there should be an adequate cause of public policy; and the second of them is, that there should be a rational prospect of a reversal of the vote of the House.' He denied the propriety of a dissolution merely to determine the question

[a] Hans. D. v. 191, pp. 1695-1702.

whether an administration should continue in office. Admitting the right to dissolve where it was doubtful whether the country would ratify the vote of the House, he contended that the large majorities (of 60 and 65) against ministers on the Irish Church question were 'a sufficient evidence of the judgment of the country.'[d] 1868.

Mr. Gladstone, moreover, protested against a postponement of the dissolution—which, according to precedent, should be immediate—to 'the autumn;' ministers meanwhile proposing to submit to the House questions of great constitutional importance. He also declared his intention of following up his resolutions upon the Irish Church with a Bill to suspend appointments therein until after the meeting of the new Parliament.[e]

Other leading members took part in the debate, and vehemently opposed the contemplated delay in the dissolution of Parliament, and the continuance of ministers in office for eight or nine months, until a new Parliament could pass judgment upon them.

Mr. Disraeli, in reply, stated that ministers were willing to abstain from all unavoidable legislation, and to limit themselves to passing the Scotch and Irish Reform Bills, and the Boundary Bills, which would permit of a dissolution in November, with an appeal to 'the new constituencies.' But he repudiated the notion that the adverse vote on the Irish Church question—which he believed to have been a conscientious vote on a subject of great importance—was to be regarded as meant 'in any way whatever to imply a general want of confidence in the government.' On such a matter there ought to be no mistake or misunderstanding. 'If you wish to pass a vote of want of confidence, propose one. Let the case be fairly argued, let the House give a deliberate opinion, and let the country judge.' If the Opposition

[d] Hans. D. v. 191, pp. 1708–1713.
[e] *Ib.* pp. 1714–1717. For the proceedings upon this Bill, see *post*, v. 2.

1868. objected to the course proposed by ministers, it would be their duty to propose a vote of this description, which, if carried, would lead to an immediate dissolution. The reason why an immediate dissolution had not been already determined upon was, as everyone knew, because ministers were 'placed, in reference to that point, in circumstances of a peculiar and unprecedented character,' wherein they would 'endeavour to arrive at some understanding with the House which, while it would facilitate the progress of public business, would be of the greatest advantage to the country.'[f] Next day, a discussion arose as to an apparent discrepancy between the terms of the ministerial statement in the House of Commons and that given in the House of Lords, a point which will be noticed in a subsequent page.[g] But upon this, as upon later occasions, the House showed an evident disinclination to favour the introduction of a vote of want of confidence, and no attempt was made, in either House, during the remainder of the session, to force the ministers out of office by such a method.[h]

Meanwhile, the Scotch and Irish Reform Bills, and the Boundary Bills, were proceeded with, and ministers were obliged to permit very extensive and important amendments to be made in these measures. Upon one occasion, however, they stood firm, and refused to be responsible for certain amendments which had been carried against them in committee on the Scotch Reform Bill. A compromise was afterwards agreed upon, and the Bill allowed to proceed.[i]

On May 29, Mr. Disraeli repeated that the Government were of opinion that they should expedite the dissolution as much as possible, and confine their legis-

[f] Hans. D. v. 191, pp. 1742–1745, 1815.

[g] See *post*, v. 2.

[h] See Hans. D. v. 191, p. 1902; v. 192, pp. 648, 797, 1035, 1224; v. 193. p. 1809.

[i] *Ib.* v. 192, pp. 435, 473, 485, 622, 841. See also the summary of proceedings on these Bills, in the Ann. Reg. for 1868.

lation, 'generally speaking, to that which was necessary;' in other words, 'to the supplementary Reform Bills and the Estimates.' Various government measures would accordingly be dropped. But it was urged that there were 'special reasons' why the Bribery and Corruption Bill, the Telegraphs Bill, and the Foreign Cattle Importation Bill, should be allowed to proceed, either wholly or partially; although it was admitted that it would be 'for the House to express an opinion' on this subject. Mr. Gladstone concurred in these arrangements,[j] and finally all the aforesaid Bills were passed through both Houses, except the Foreign Cattle Bill, which encountered great opposition, and was withdrawn.[k] Some difficulty arose on account of ministers proposing to take the Votes in Supply for the whole year, instead of for a limited period, and until the meeting of the new Parliament, agreeably to precedent in similar cases; but it being shown that the course proposed was advisable on the score of public convenience, the Opposition consented to it,[l] and the session closed without further strife. The dissolution of Parliament took place on November 11, 1868, and on December 10 the new Parliament assembled. 1868.

Reviewing the relations of ministers towards the House of Commons during the whole of this session, it is evident that they were most unsatisfactory and objectionable. It would, however, be unfair to impute blame, indiscriminately, to any party or person, for what was really owing to a combination of circumstances, which prevented ministers from making that immediate appeal to the country from the adverse vote of the House of Commons which is ordinarily required by constitutional usage. By mutual consent, the ministers and the House of Commons agreed, that the dissolution should be deferred until the new constituencies

[j] Hans D. v. 192, pp. 1065-1068. [k] *Ib.* v. 193, p. 1775.
[l] *Ib.* v. 192, pp. 1126, 1223, 1602.

1868. were organised. This prolonged, for several months, the unseemly and unconstitutional spectacle of a ministry holding office by sufferance, and unable to exercise any effectual control over the proceedings of the House of Commons; a condition of things which, it need scarcely be said, was palpably at variance with the first principles of parliamentary government.[m]

The Disraeli Administration having appealed from the decision of the House of Commons, in favour of disestablishing the Irish Church, to the constituent body, Parliament was dissolved, by royal proclamation, on November 11, 1868, and a new one summoned to meet on December 10. In order to effect this an Act was passed to accelerate the registration of voters enfranchised by the new Reform Acts (31 & 32 Vict. c. 58). The elections resulted in an important accession of strength to the Liberal party,[n] and in the return of an almost unprecedented number of new members.[o] As soon as he was assured that the decision of the constituencies was fatal to his continuance in power, Mr. Disraeli resolved not to await the meeting of Parliament, but immediately to retire from office. Accordingly he at once placed his own resignation and that of his colleagues in the hands of her Majesty. His reasons for adopting this 'unusual course'[p] were communicated to the Conservative party in both Houses on December 2 by a circular from Downing Street. In this paper Mr. Disraeli vindicated the course taken by ministers in appealing to the verdict of the enlarged electoral body, justified his conduct in relinquishing office without awaiting the assembling of Parliament, and announced his steadfast adherence to his former policy in resisting

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[m] See *ante*, p. 3. Ed. Rev. v. 128, p. 572.

[n] Pledged to support Mr. Gladstone in his measure for the disestablishment of the Irish Church. Hans. D. v. 198, p. 569.

[o] Ann. Reg. 1868, pp. 171-174.

[p] Hans. D. v. 194, pp. 414, 415.

the disestablishment and disendowment of the Irish Church.[q] 1868.

No doubt the general current of precedent is in favour of a beaten minister accepting his defeat only at the hands of Parliament, and the custom is grounded on the salutary doctrine, that it is only through Parliament that the nation can speak.[r] Incidentally referring to his resignation of office, several months afterwards, Mr. Disraeli told the House of Commons that, feeling the result of the general election to be so different from that which they had counted upon and predicted, his colleagues unanimously agreed with him in thinking that it would be most painful to remain in the possession of power and patronage a moment longer than was necessary. 'We felt that this course was due to our own honour; to the personal convenience of the sovereign, and the progress of public business; and lastly, due to the incoming minister, that he should not be thrust into office without time to prepare his measures.'[s]

The same course was followed by Mr. Gladstone, in resigning office after the defeat of his ministry at the hustings, in February 1874. And Mr. Freeman regards these precedents as introducing a new principle into the unwritten Constitution of England, of the direct action of the electors at their polling booths to effect a change of ministers without the intervention of the House of Commons. While deprecating this change, he regards these precedents as pointing out a course which, hereafter, will be followed by future ministers.[t]

Mr. Gladstone having been the leader in whose name the Liberal party had gained the victory at the elections, he was the one to whom her Majesty naturally entrusted the formation of a new ministry. He was summoned to Windsor Castle for this purpose on December 5, and in a few days succeeded in forming a powerful cabinet, which included Mr. Bright.

Upon the meeting of Parliament on December 10 the ministerial benches were necessarily unoccupied, the new ministers having vacated their seats by the acceptance of office. Under these circumstances, after the election of a speaker, and the issue of the new writs, an adjournment took place to admit of the re-election of

[q] Ann. Reg. 1868, p. 174.
[r] Fort. Rev. N.S. v. 24, p. 205.
[s] Hans. D. v. 195, p. 739.
[t] Int. Rev. v. 2, p. 374.

ministers, and of some preparation on their part for their ministerial duties. Parliament re-assembled on February 16, when the queen's speech was delivered (by commission), and business commenced. It is worthy of note that—with the exception of Mr. Disraeli's circular above mentioned and of the ministerial explanations which were given at the hustings—no official explanation was made to Parliament or to the country of the causes which had led to the change of government. The new ministers quietly took their places in both Houses, and no explanations were given or sought for upon either side.[u]

28. *Defeat and Resignation of the Gladstone Ministry in* 1873.

1873. On March 3, 1873, on motion for the second reading of the Irish University Education Bill, an amendment was proposed to substitute a resolution, expressing regret that ministers, previously to this motion, had not felt it to be their duty to state to the House the names of the 28 persons intended to be submitted to the House as members of the Governing Council under this Bill. Mr. Gladstone showed that the practice of Parliament admitted of these names being communicated to the House at any time before the close of the Committee on the Bill, and that it was 'not merely difficult but impossible for ministers, consistently with due respect to Parliament, to present this list' . . . 'before they knew what form the Bill would finally assume.'[v] Nevertheless, after four nights' debate, the amendment was agreed to. It is evident, from the debate, that this vote of censure was carried, not upon the validity of the objection embodied in the amendment itself, but upon the broader ground of combined opposition to the government scheme for the reform of University Educa-

[u] Hans. D. v. 194, pp. 50, 217. [v] *Ib.* v. 214, p. 1194.

tion in Ireland.[w] Immediately after the vote was taken, the House, on motion of Mr. Gladstone, adjourned for two days.[x] On March 13 both Houses were informed that, in consequence of this vote, ministers had resigned office, and her Majesty had accepted their resignations. Whereupon the House of Commons adjourned until March 17. But the House of Lords—although it was admitted that, 'as a rule, it is not convenient to proceed with legislation when there is no executive government'—agreed to proceed with the second reading of the Marriage with a Deceased Wife's Sister Bill, that being a measure 'entirely apart from party politics,' which had been debated by the House of Lords, under analogous circumstances, in 1851.[y] 1873.

After making his announcement to the House of Commons, Mr. Gladstone was questioned as to whom he recommended to the queen to entrust with the formation of a new government. But he declined to answer. As the forty days contemplated by the Act for an address by either House of Parliament against schemes of the Endowed Schools Commissioners were on the eve of expiring, and notice had been given for addresses in reference to certain schemes, the retiring vice-president of the Education Board gave notice of a Bill to enlarge the forty days to four months, so that such intended addresses should not be prejudiced by the delay occasioned by this political exigency.[z]

On March 17 both Houses were informed that the queen had sent for Mr. Disraeli, who was ready to undertake, but had been obliged to relinquish his attempt, to form an administration, and that Mr. Gladstone had been invited to resume office. Under these circumstances a further adjournment took place until March 20. On that day fuller explanations were

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[w] Hans. D. v. 214, p. 1421.
[x] *Ib.* p. 1868
[y] *Ib.* p. 1869.
[z] *Ib.* pp. 1909–1912.

1873. given by and on behalf of Mr. Gladstone and Mr. Disraeli, from which it appeared that, while Mr. Disraeli was confident of his ability to form an efficient administration, he could not undertake the conduct of public business in the present House of Commons. He stated, in justification of this conclusion, that the adverse vote on the Irish University Bill had been decided against the ministry by the unexpected combination of Irish Roman Catholic members (who it had been anticipated would support the Government) with the Conservative party, who themselves opposed the Bill on the ground that it sacrificed the educational interests of Ireland to the claims of the Roman Catholic hierarchy. That a large section of the Liberal party had also opposed the Bill on the same grounds. The general unpopularity of this Bill, and the discordant elements that had combined to reject it, scarcely seemed to justify (in Mr. Disraeli's opinion) the course pursued by the ministry in resigning upon its defeat. There being no common bond of union between Mr. Disraeli and the majority of the House who rejected this Bill, he could not expect to be able to carry on the public business with the existing House of Commons. Neither was he prepared at once to advise a dissolution of Parliament, although her Majesty freely offered him this alternative. For he did not think it at all desirable to dissolve on the Irish University Bill, and he was not at present prepared with 'a matured policy to present to the people' in case of a dissolution. So much indispensable business remained to be disposed of, that if the Conservative party had accepted office they would have had to conduct the affairs of Government in the House of Commons for the duration of a session of no ordinary length, with a large majority arrayed against them, and liable (if not to wholesale censure in the shape of a vote of want of confidence) to daily humiliations and obstructions. They would

have been obliged (in view of a dissolution at the earliest possible period) to accept the estimates of their predecessors, which, as a general rule, was highly objectionable. 'Nothing but a political exigency, nothing but the existence of a question on which the country is passionately determined to have an instant decision, can justify a minister in taking that course.' For 'expenditure depends upon policy,' and a policy must be first agreed upon before the required expenditure can be determined. Under these circumstances Mr. Disraeli and his friends were unanimously agreed that it would be prejudicial to the interests of the country for a Conservative ministry to take office at this juncture, and that Mr. Gladstone, having vindicated his honour (which he had pledged by the assurance that the fate of the ministry was involved in the success of this Bill) by the act of resignation, might return to office without the slightest difficulty. 1873.

After these explanations the House proceeded with the Orders of the Day.[a] The Gladstone ministry resumed office without making any changes in the *personnel* of the government, but obviously weaker for what had occurred. During the remainder of the session they were obliged to refrain from much attempt at legislation beyond one or two measures of special importance which had been previously introduced. Some painful exhibitions of dissensions between ministers took place on the floor of the House of Commons, which helped to discredit the government, and towards the end of the session they sustained a series of minor but vexatious defeats, a proof that they were able to exercise but little control over the proceedings of Parliament. Commencing in August, shortly after the close of the session, the ministry was gradually reconstructed, Mr. Gladstone assuming the office of chancellor of the

[a] Hans. D. v. 214, pp. 1914-1945.

1873. exchequer in addition to that of first lord of the treasury, two or three able men were introduced into political service for the first time, and other changes made, with a view to increase of strength and efficiency. Lord Ripon, Mr. Childers, Mr. Monsell, and Mr. Baxter retired from office. Mr. Bright re-entered the cabinet, and Mr. Lowe and Mr. Ayrton left offices wherein they had become personally unpopular, and accepted other places in the government.[b] These changes, however, did not suffice to restore public confidence in the government, as was apparent by the continued losses sustained by the ministerial party at occasional elections in the autumn and winter of 1873. Accordingly, on January 24, 1874, Mr. Gladstone suddenly and unexpectedly determined upon a dissolution of Parliament. Never in England did so large a number of electors record their votes as upon this occasion. Never was there less bribery, intimidation, or electoral manœuvring. For the first time, all the recent legislative provisions designed to secure the utmost freedom, purity, and independence of election, were in full operation. So that the verdict of the constituencies against the Gladstone ministry was decisive.[c]

A remarkable, although not altogether unprecedented, circumstance attended this dissolution of Parliament. Parliament had already been convened to assemble for despatch of business on February 5, when (as in 1806) an appeal to the constituencies was suddenly determined upon. Although possessed of a nominal majority of 65 in the House of Commons, Mr. Gladstone, in view of the dispirited state of his party, and the adverse result of so many casual elections, considered that the administration were not strong enough to carry on the government with credit and dignity. His ministry were unable to resign, because the occur-

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[b] Ann. Reg. 1873, p. 83. [c] Ed. Rev. v. 139, p. 544.

rences in the spring of 1873, above mentioned, showed that the Parliament contained no party 'ready to take their place.' Being desirous, moreover, to propose certain important and beneficial financial questions (viz. the abolition of the income tax and the readjustment of taxation), which would require a strong and united following to submit to the House of Commons, a dissolution at the eleventh hour was resolved upon. The proclamation dissolving Parliament was issued on January 26, and the elections held early in February. The result being unmistakably adverse to ministers, they resigned office on February 17 in order to give immediate effect to the wishes of the electors, and to avoid the inconvenience to public business which would have resulted from delay. This course was afterwards objected to by experienced members of the House of Commons, on the ground that it was an evasion of the direct responsibility of ministers to Parliament. Mr. Gladstone admitted the correctness of this doctrine, as a general rule, but justified his present course for certain practical reasons, akin to those expressed by Mr. Disraeli when, in 1868, he resigned office under similar circumstances.[d] 1874.

However, upon the meeting of Parliament, a private member (Mr. Smollett) undertook to propose a vote of censure upon Mr. Gladstone, in the following terms:—

> That, in the opinion of this House, the advice given to the crown by her Majesty's late ministers, to dismiss the last Parliament upon January 26 last, in an abrupt manner, and without any previous warning, at a time when both Houses had been summoned to meet for the dispatch of public business, and when no emergency had arisen for such a step, is censurable; and, further, that the precipitate appeal to the constituencies consequent on such dissolution is opposed to the spirit of the constitution.

Whereupon Mr. Gladstone recapitulated the circumstances of the case, which he contended afforded a

[d] Hans. D. v. 218, pp. 82, 127.

1874. complete justification of his conduct, and then withdrew. After a few words from Sir G. Bowyer the motion was negatived, without a division.[e]

Upon Mr. Gladstone's resignation, her Majesty sent for Mr. Disraeli, and empowered him to form a ministry. Being able to rely upon a majority of fifty in the new House of Commons, Mr. Disraeli had no difficulty in this task. By February 21 the new cabinet was complete. It consisted of twelve members only, of whom six had seats in the House of Lords.

And here it may be remarked that the opening of this Parliament—wherein the Conservative party had an undoubted majority—gave occasion for the distinct recognition of the admitted expediency of treating the speakership of the House of Commons as no longer the prize of the party in power. Mr. Brand, formerly the 'whip' of the Liberal party, who had been first chosen as speaker under the Liberal administration, was reinstated in office by the votes of a Conservative majority on the accession of Mr. Disraeli to power in 1874.[f]

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[e] Hans. D. v. 218, pp. 1101-1129.
[f] *Ib.* p. 6. Amos, Fifty Years' Eng. Const. p. 358.

TABULAR VIEW OF THE ADMINISTRATIONS OF GREAT BRITAIN FROM 1782 TO 1880.

N.B.—The numbers refer to the preceding 'Narrative of Administrations,' which describes the political history of each Ministry.

No.	Name of Prime Minister	Political character of the Ministry	Date of Appointment	Date of Resignation or Dismissal	Cause of Retirement of the Ministry	Dissolutions of Parliament during this period	Reasons for which Parliament was dissolved
1	MARQUIS OF ROCKINGHAM . . .	Whig .	1782 March	1782 July 1	Death of the premier . . .	[Existing Parliament first met on Oct. 31, 1780]	
2	EARL OF SHELBURNE	Whig .	1782 July 3	1783 Feb. 24	Vote of censure by House of Commons on February 21, 1783		
3	DUKE OF PORTLAND (His first administration)	Coalition	1783 April 2	1783 Dec. 18	Dismissed by the king on account of Fox's India Bill		
4	WILLIAM PITT . . (His first administration)	Tory .	1783 Dec. 19	1801 Feb. 5; but owing to the king's illness he remained in office until the middle of March	Disagreement with the king on account of the Roman Catholic claims	1784, March 25	Obstructions and defeats of ministers in the House of Commons.
						1790, June 19	On account of the near approach of its natural term of existence.
						1796, May 20	For the same reason as the preceding dissolution. N.B. This Parliament was declared by proclamation, issued under the authority of certain statutes, and delivered in open Parliament on December 31, 1800, to be continued as the first Parliament of the United Kingdom of Great Britain and Ireland.—(Parl. Hist. v. 35, p. 857.)

TABULAR VIEW OF THE ADMINISTRATIONS OF GREAT BRITAIN—*continued.*

No.	Name of Prime Minister	Political character of the Ministry	Date of Appointment	Date of Resignation or Dismissal	Cause of Retirement of the Ministry	Dissolutions of Parliament during this period	Reasons for which Parliament was dissolved
5	HENRY ADDINGTON.	Tory .	1801 March 17	1804 May 10	Weakness of the ministry in the House of Commons	1802, June 29	On account of the near approach of its natural term of existence. [The king offered Mr. Addington a dissolution of Parliament before his resignation of office, but the offer was declined.]
6	WILLIAM PITT . . (His second administration)	Tory .	1804 May 10	1806 Jan. 23	Death of the premier		
7	LORD GRENVILLE . .	Coalition	1806 Jan. 26	1807 March 24	Dismissed by the king for refusing to give a pledge on the Roman Catholic question	1806, Oct. 24	On account of the failure of the negotiations for peace with France, and in order to strengthen the hands of the government in the prosecution of the war.—(Parl. D. v. 8, p. 27.)
8	DUKE OF PORTLAND (His second administration)	Tory .	1807 March 24	1809 Oct. 30	Death of the premier . .	1807, April 27	Though the new ministry were fully sustained in the House of Commons, yet Parliament was dissolved, in order to take the sense of the country upon the conduct of the king in changing his advisers. The ministerial majority was thereby largely increased.
9	SPENCER PERCEVAL.	Tory .	1809 Nov. —	1812 May 11	The death, by assassination, of the premier		
10	EARL OF LIVERPOOL	Tory .	1812 June 8	1827 March 27	The resignation, occasioned by severe illness of the premier. He was seized with paralysis on	1812, Sept. 29 1818, June 10	For no consideration affecting the state of parties. On account of the near ap-

					February 17, 1827, but did not resign his office for about six weeks. During this interval, and from thence until April 10, the ministry was virtually without a head		proach of its natural term of existence.
						1820, Feb. 28	On account of the demise of the crown (George III.).
						1826, June 14	On account of the termination of its seventh session.
11	GEORGE CANNING .	Coalition	1827 April 10	1827 Aug. 8	The death of the premier		
12	LORD GODERICH . .	Coalition	1827 Aug. —	1828 Jan. 8	Internal dissensions in the cabinet		
13	DUKE OF WELLINGTON	Coalition at first, afterwards Tory	1828 Jan. 8	1830 Nov. 16	Ministerial defeat in House of Commons on November 15, 1830, on the Civil List	1830, July 24	The demise of the crown by death of George IV.
14	EARL GREY . . .	Whig .	1830 Nov. 16	1834 July 8	Internal dissensions in the cabinet	1831, April 22	On account of defeat of ministers in the House of Commons on the Reform Bill.
				N.B. This ministry resigned on May 8, 1832, because the king would not consent to create a batch of peers, in order to carry the Reform Bill in the House of Lords. The Duke of Wellington was empowered to form a new ministry, but failed in the attempt. On May 17 the king recalled the Grey ministry, and gave them written authority to create as many peers as might be necessary to ensure the passing of the Reform Bill		1832, Dec. 3	To admit of the enlarged representative system being put into immediate operation.
15	VISCOUNT MELBOURNE . . . (His first administration)	Whig .	1834 July 14	1834 Nov. 12	Dismissed by the king, who disapproved of the politics of ministers		
16	SIR ROBERT PEEL . (His first administration)	Tory .	1834 Nov —	1835 April 8	Inability to control the House of Commons, and consequent ministerial defeats in that House	1834, Dec. 30	With a view to obtain a House of Commons that would give the king's new ministers 'a fair trial.'

TABULAR VIEW OF THE ADMINISTRATIONS OF GREAT BRITAIN—*continued.*

No.	Name of Prime Minister	Political character of the Ministry	Date of Appointment	Date of Resignation or Dismissal	Cause of Retirement of the Ministry	Dissolutions of Parliament during this period	Reasons for which Parliament was dissolved
17	VISCOUNT MELBOURNE. . . (His second administration)	Whig .	1835 April 18	1841 Aug. 30	Vote of want of confidence by House of Commons; followed up, after the dissolution of Parliament, by a similar vote in both Houses, in amendment to the Address in answer to the speech from the throne.	1841, June 23	On account of the vote of House of Commons on June 4, 1841, against ministers. But the issue raised by ministers at the hustings was not that of confidence in themselves, but advocating a modification of the corn laws.
				N.B. This ministry resigned on May 7, 1839, nominally because of their inability to carry the Jamaica Constitution Bill in the House of Commons by more than five majority on its second reading, but really on account of internal weakness. Sir Robert Peel was empowered to form a ministry; but as the queen refused to allow the Ladies of the Bedchamber to be changed, he relinquished the undertaking. The old ministry were then reinstated in office.			
18	SIR ROBERT PEEL . (His second administration)	Conservative	1841 Aug. 30	1846 June 26	Ministerial defeat in House of Commons on June 25, 1846, on the Irish Coercion Bill.		
				N.B. This ministry was dissolved on December 5, 1845, by the resignation of Sir Robert Peel, on account of the refusal of his colleagues to agree to his plan for the settlement of the corn laws; whereupon Lord John Russell was commissioned to form a government, but could not succeed. Sir Robert Peel was then recalled to power, and his former colleagues agreed to support his policy, with the exception of Lord Stanley, who did not again take office.		

19	LORD JOHN RUSSELL (His first administration)	Whig	1846 July 6	1852 Feb. 23	Defeat in House of Commons on February 20, 1852, on Militia Bill.	1847, July 23	On account of the termination of the seventh session of this Parliament. There was no prominent question upon which either party could appeal to the country. — (Martin, 'Life of the Prince Consort,' v. 1, p. 419.)
				N.B. This ministry resigned on February 22, 1851, on account of their weakness in the House of Commons, and especially their recent defeat on a motion of Mr. Locke King for the extension of the franchise. Several attempts were made to form a Conservative or a Coalition government, but without success. At length the Whig ministry were recalled to office.			
20	EARL OF DERBY (His first administration)	Conservative	1852 Feb. 26	1852 Dec. 17	Ministerial defeat in House of Commons on December 16, 1852, on the Budget; and having no assurance of support from the House upon their general policy.	1852, July 1	To take the sense of the country on the questions of free-trade and the corn laws.
21	EARL OF ABERDEEN	Coalition	1852 Dec. 27	1855 Feb. 1	Internal dissensions, incompetency, and defeat in the House of Commons on January 29, on appointment of Sebastopol Committee.		
22	VISCOUNT PALMERSTON (His first administration)	Whig	1855 Feb. 6	1858 Feb. 20	Rejection by the House of Commons on February 19, 1858, of the Conspiracy to Murder Bill, and vote of censure against ministers in reference to that measure.	1857, March 21	On account of the vote of censure by the House of Commons on March 3, 1857, upon the conduct of affairs in China.
23	EARL OF DERBY (His second administration)	Conservative	1858 Feb. 22	1859 June 10	Vote of want of confidence by the House of Commons on June 9, 1859, in amendment to the Address in answer to the speech from the throne.	1859, April 23	The ministerial Reform Bill having been rejected by the House of Commons on March 31, 1859, ministers resolved to appeal to the country. But the issue they raised at the hustings was upon the general policy of the government, irrespective of their views on the question of reform.

TABULAR VIEW OF THE ADMINISTRATIONS OF GREAT BRITAIN—*continued.*

No.	Name of Prime Minister	Political character of the Ministry	Date of Appointment	Date of Resignation or Dismissal	Cause of Retirement of the Ministry	Dissolutions of Parliament during this period	Reasons for which Parliament was dissolved
24	VISCOUNT PALMERSTON . . . (His second administration)	Whig	1859 June 17	1865 Oct. 18	The death of the premier . .	1865, July 6	On account of the termination of the seventh session of this Parliament.
25	EARL RUSSELL . . (His second administration)	Whig	1865 Oct. —	1866 June 26	Ministerial defeat in the House of Commons on June 18, 1866, on the Representation of the People Bill		
26	EARL OF DERBY . . (His third administration)	Conservative	1866 July 6	1868 Feb. 25	Ill health of the premier		
27	BENJAMIN DISRAELI (His first administration)	Conservative	1868 Feb. 28	1868 Dec. 2	The result of the general election proving unfavourable to ministers	1868, Nov. 11	On account of an adverse vote in the House of Commons on April 30, 1868, in favour of the disestablish- of the Irish Church.
28	W. E. GLADSTONE . (His first administration)	Liberal	1868 Dec. 9	1874 Feb. 17	On account of the general election proving unfavourable to ministers	1874, Jan. 26	On account of the gradual withdrawal of confidence in ministers, in the House of Commons, and in the constituencies. (See Mr. Gladstone's address to his constituents, 'Ann. Reg.,' 1874, p. 2.)
29	BENJAMIN DISRAELI (afterwards Earl of Beaconsfield) (His second administration)	Conservative	1874 Feb. 21	1880 April 27	Do. do.	1880, March 25	For 'considerations of policy and convenience' (Queen's speech).
30	W. E. GLADSTONE . (His second administration)	Liberal	1880 April 28			1885, June 8	Defeated on proposal for increase of spirit duties, and taxation on land.

CHAPTER V.

THE SOVEREIGN.

Supremacy of the sovereign.

THE supreme executive authority of the state in all matters, civil and military, together with jurisdiction and supremacy over all causes and persons ecclesiastical in the realm, belongs to the sovereign of the British Empire, by virtue of his kingly office; for he is the fountain of all state authority, dignity, and honour, and the source of all political jurisdiction therein.

'This realm of England is an Empire, and so hath been accepted in the world, governed by one Supreme Head and King, having the dignity and Royal Estate of the Imperial Crown of the same.'[a] Prior to the union with Ireland, the style and title of the reigning sovereign was determined by the royal prerogative; but upon that occasion Parliament prescribed a change therein. It has accordingly been necessary for legislation to sanction any further alteration in the same.[b] This was done in 1876, by the Royal Titles Act, under which, by proclamation, the queen is also styled Empress of India. This title is, as a general rule, to be used only in India. The self-governing colonies will be permitted to use their own option in the matter.[c]

He is also the head of the Imperial Legislature, which derives its existence from the crown, and a component part of every local legislature throughout his dominions. In all that concerns the outward life of the empire, and

[a] 24 Henry VIII. c. 12. And see 39 & 40 Geo. III. c. 67

[b] Ld. Selborne, Hans. D. v. 228, p. 1388. And see Amos, Fifty Years of Eng. Const. p. 215.

[c] Secretary Hardy, Hans. D. v. 229, p. 399. But see Mr. Childers's objections to this, *Ib.* p. 410. And Mr. Disraeli's admission, that 'that is a point involved in much difficulty.' *Ib.* p. 461. The Colony of South Australia has intimated, unofficially, an objection to the use of the new title. S. A. Assn. Votes, 1876, p. 30. For a list of official documents wherein the full statutory style and title of the sovereign is customarily used, see Com. Pap. 1876, v. 60, p. 625.

its relations with other countries or provinces, the sovereign is the visible representative of the state. It is his especial prerogative to declare war and to make peace, and also to contract alliances with foreign nations.

Perpetuity of the kingly office.

Pre-eminence, perfection, and perpetuity are acknowledged attributes of the Crown of England in its political capacity. The crown is hereditary, but in the eye of the law 'the king never dies.' The decease of a reigning monarch is usually termed his demise; which signifies that, in consequence of the disunion of the king's natural body from his body-politic, the kingdom is transferred or demised to his successor, and so the royal dignity remains perpetual.[d]

Coronation.

After their accession to the throne in the natural order, the sovereigns of England are consecrated to their high office in the solemnity of a royal coronation at Westminster Abbey. This rite is performed by the Archbishop of Canterbury, assisted by other prelates of the English Church, in the presence of the nobility.[e] A formal coronation is not necessary to the perfection of the king's title to the throne;[f] but by this solemn act the Divine sanction is imparted to the English monarchy, and the whole fabric of our political and social order is strengthened and confirmed:[g] and by the oath taken at their coronation the sovereigns of the United Kingdom acknowledge the supremacy of Parliament, and their obligations to govern according to the laws and customs of the kingdom.

The oath taken by the sovereign at his coronation is not pre-

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[d] Broom's Leg. Max. 4th ed. pp. 48, 51.

[e] See Stubbs, Const. Hist. v. 1, p. 144. For the ceremonial itself, see Chapters on Coronations (Lond. 1838) c. ix. [See also Ld. Redesdale's observations, Hans. D. v. 193, p. 1345; v. 197, p. 71.] The opinions given by the law officers of the crown to George III. on this point, see Yonge, Life of Ld. Liverpool, v. 1, p. 44. Sir R. Peel's opinion, Hans. D. v. 192, p. 734. And Earl Derby's, *Ib.* v. 197, p. 24. For the present form of the sovereign's oath see Com. Pap. 1867-8, v. 57, p. 17.

[f] Petersdorff, New Abridg. v. 6, p. 214.

[g] See Bagehot, Eng. Const. pp. 64, 69.

scribed by Act of Parliament, but is regulated from time to time by an order in council, as the altered circumstances of the nation may require. This circumstance warrants the conclusion that the coronation oath is imposed on the sovereign in his executive, and not in his legislative capacity.[h]

Coronation oath.

From the supreme dignity and pre-eminence of the crown, it naturally follows that the king is personally amenable to no earthly tribunal whatsoever, because all tribunals in the realm are presumed to derive their authority from him, and none are empowered to exercise authority or jurisdiction over him. The royal person, moreover, is by law sacred and inviolable, and the sovereign is personally irresponsible for all acts of Government.[i]

Personal irresponsibility of the sovereign.

But while the power of the sovereign is supreme in point of jurisdiction, it is neither absolute nor unlimited in extent; for it is a maxim of the common law, that although the king is under no man, yet he is in subjection to God and the law, for the law makes the king.[j] And though the monarch is not personally responsible to any human tribunal for the exercise of the functions of royalty, yet these functions appertain to him in his political capacity, are regulated by law or by constitutional precept, and must be discharged for the public welfare, and not merely to gratify his personal inclinations. For the king is bound to govern his people, not according to his arbitrary will, but according to law.[k] 'The law,' in fact, 'is the only rule and measure of the power of the crown, and of the obedience of the people.'[l]

His subjection to the law.

Succession to the crown of England has always been

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[h] Hans. D. v. 195, p. 1067. *Ib.* v. 198, pp. 894, 906.

[i] Broom's Leg. Max. 4th ed. p. 54; Bowyer, Const. Law, pp. 134–140; Atkinson's Papinian, p. 33.

[j] Broom's Leg. Max. p. 48. Hallam, Const. v. 3, p. 90.

[k] Broom, Const. Law, p. 63. And see in De Lolme, bk. i. c. viii., the manner in which the several prerogatives of the crown are limited and restrained by law, and their exercise subjected to the general control of Parliament.

[l] Robert Walpole, on the impeachment of Dr. Sacheverell. State Trials, v. 15, p. 115.

Succession to the crown.

hereditary; but even this right is held subject to limitation and control by the High Court of Parliament. Formerly the crown went to the next heir; but since the Act of Settlement the inheritance is conditional, being limited to heirs of the body of the Princess Sophia of Hanover, being Protestant members of the Church of England, and married only to Protestants.[m]

Personal rule of the sovereign.

The sovereigns of England, before the Revolution of 1688, ruled by virtue of their prerogative, and with the aid of ministers chosen by themselves. These ministers had no necessary connection with Parliament; although, if peers of the realm, they were entitled to seats therein. The monarch was the originator of his own policy, and was not bound to take advice before he should decide upon affairs of state. Moreover he was usually sufficiently conversant with the details of administration to be able to act independently. His ministers were only amenable to Parliament for high crimes and misdemeanours, which were directly attributable to themselves.[n] This method of government gave rise to frequent altercations and struggles between the crown and Parliament, which sometimes could only be decided by an appeal to the sword. Although, in the main, the people were contented and prosperous, and the great principles of constitutional liberty continued to advance, yet the security for the public welfare depended too much upon the personal character of the monarch, and his ability to rule with foresight and beneficence. Herein consisted the peculiar defect of government by prerogative. When the exercise of the royal authority fell into bad hands, or irreconcilable differences arose between the crown and the Parliament, there was no adequate security against misrule, and no remedy to prevent national discontent from fermenting into open rebellion. Two

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[m] 12 & 13 Will. III. c. 2. Martin's Pr. Consort, v. 1, p. 57; and *post*, v. 2.

[n] Hallam, Const. Hist. *passim*. Park's Dogmas, p. 41.

revolutions within the space of half a century, and a dynasty of kings sent into permanent exile for the continued infraction of popular rights, proved the necessity for a vital change in the practice, if not in the theory, of the constitution.

Revolution of 1688.

Upon the occurrence of the Revolution of 1688, the attention of the most eminent statesmen was directed to the endeavour to bring the executive and legislative powers into more harmonious action. This was mainly effected by a more distinct recognition than heretofore of the doctrine of ministerial responsibility to Parliament. But it was only by slow degrees, and as the result of political experience painfully acquired on all sides, that this doctrine became fully accepted.

Meaning of the maxim 'the king can do no wrong.'

It has always been a leading maxim of the British constitution that 'the king can do no wrong.'[o] He is to be accounted as responsible to God alone for the righteous exercise of authority over the people of his realm. It is not meant by this doctrine that the king is above the laws, and that all his acts are necessarily just and right. As an individual he is independent of, and not amenable to, any earthly power or jurisdiction; but all his acts are, nevertheless, controlled by the law; and 'the body politic is reared upon the basis, that the law is above the head of the state, and not the head of the state above the law.'[p] The maxim that 'the king can do no wrong,' while it sounds like a moral paradox, is, in fact, but the form of expressing a great constitutional principle, that no mismanagement in government is imputable to the sovereign personally; whilst, on the other hand, it is equally true that no wrong can be done to the people for which the constitution does not provide a remedy. These seeming anomalies are reconciled by

[o] See Bowyer, Const. Law, p. 136; Broom's Leg. Max. p. 40. And Maurice's paper, Do Kings reign by the grace of God? in Tracts for Priests and People, 2nd series, p. 35.

[p] See Smith's Parl. Rememb. 1861, pp. 197-200. And *ante*, p. 261.

[q] See Amos, Eng. Const. in the

the fundamental doctrine that the king can perform no act of government of himself, but that all acts of the crown must be presumed to have been done by some minister responsible to Parliament. This principle, now so well understood, was not recognised in its entirety until a comparatively recent period: for while it is a necessary corollary from the principles of government established by the Revolution of 1688, we find it first insisted upon, without exception or qualification, in the reign of Queen Anne.

The Earl of Rochester, in the House of Lords, in 1711, protested against the doctrine 'that the queen was to answer for everything,' whereas, 'according to the fundamental constitution of this kingdom, the ministers are accountable for all.'[r] A similar statement was made by the Duke of Argyle, in the House of Lords, in 1739.[s] And in a debate in the House of Commons, on February 13, 1741, Sir John Barnard thus expressed himself: 'The king may, it is true, exercise some of the prerogatives of the crown without asking the advice of any minister; but if he does make a wrong use of any of his prerogatives, his ministers must answer for it, if they continue to be his ministers.'[t]

Ministerial responsibility fully recognised.

At the same time, it has always been acknowledged, with more or less distinctness, that the king's ministers were answerable for all acts of government that could in any way be traced to their advice or co-operation. Either by parliamentary censure, or impeachment, or by ordinary process of law, unworthy ministers have, from a very early period, been called to account for complicity in acts of misgovernment. But this mode of redress was invariably doubtful and uncertain. In the days when the collective responsibility of the administration for the acts of each individual minister formed no part of the theory of government, it was not easy to ascertain upon whom to affix the responsibility for any particular

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Reign of Charles II. pp. 11-19; Cox, Eng. Govt. p. 416. Case of Vt. Canterbury *v.* the Atty.-Genl. 1 Phillips, 306.

[r] Parl. Hist. v. 6, p. 972. Hearn, Govt. of Eng. p. 135.

[s] Parl. Hist. v. 10, p. 1138.

[t] *Ib.* v. 11, p. 1268. And see *Ib.* v. 12, p. 560.

offence. So long as a minister of state retained the favour of his sovereign, it was difficult, if not impossible, to convict him of misconduct, or make him amenable for misdeeds agreed upon in secret, and which were perhaps commanded by the king himself; so that opposition to a suspected favourite commonly took the shape of intrigues to displace him from power, or gave rise to open resistance to the crown itself.

Responsibility of ministers for acts of the crown.

As a pledge and security for the rightful exercise of every act of royal authority, it is required by the constitution that the ministers of state for the time being shall be held responsible to Parliament and to the law of the land for all public acts of the crown. This responsibility, moreover, is not merely for affairs of state which have been transacted by ministers in the name and on the behalf of the crown, or by the king himself upon the advice of ministers, but it extends to measures that might possibly be known to have emanated directly from the sovereign. If, then, the sovereign command an unlawful act to be done, the offence of the instrument is not thereby indemnified; for though the king is not personally subject to the coercive power of the law, yet in many cases his commands are under its directive power, which makes the act itself invalid if it be unlawful, and so renders the instrument of its execution obnoxious to punishment.[u] And if the rights of any subject should have been infringed by a wrongful act committed by command of the sovereign, the ordinary courts of justice will grant a remedy.

A king, however limited his powers may be, is in all modern constitutions personally irresponsible. His command is no justification of any illegal act done by another, but no constitutional monarchy seems to supply any ordinary means of punishing an illegal act done by the king's own hands.[w]

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[u] 1 Hale, pp. 43, 44.

[w] E. A. Freeman in Nat. Rev. 1864, p. 6. See Cox, Eng. Const. pp. 30, 408-416. Hearn, Govt. of Eng. pp. 99-104.

The personal command of the king is no excuse for a wrong administration of power. Lord Danby was impeached for a letter which contained a postscript in the king's own hand, declaring that it had been written by his order. And although the king is the fountain of justice, a commitment by his own direction has been held to be void, because there was no minister responsible for it.[x] In a constitutional point of view, so universal is the operation of this rule, that there is not a moment in the king's life, from his accession to his demise, during which there is not some one responsible to Parliament for his public conduct; and 'there can be no exercise of the crown's authority for which it must not find some minister willing to make himself responsible.'[y] 'The king, being a body politique, cannot command but by matter of record.'[z] Therefore, whenever the royal sign-manual is used, it is necessary that it should be countersigned by a responsible minister, for the purpose of rendering it constitutionally valid and authoritative.[a]

Public audience must be through an official.

If a peer of the realm desires to avail himself of his privilege of peerage to solicit an audience of the sovereign,[b] to make any representations on public affairs, it is necessary that he should apply for an interview through an officer of the royal household, or through the secretary of state for the Home Department.[c] But

[x] Russell, Eng. Const. p. 159. See Broom, Const. Law, pp. 244, 246, 615. Pollock in Fort. Rev. N.S. v. 30, p. 486.

[y] See Lds. Erskine and Holland's speeches, in Hans. D. v. 9, pp. 363, 414; Mr. Adam's speech, *Ib.* v. 16, p. 8 * * * *; Sir H. Nicolas, Pro. Privy Coun. v. 6, p. 200, and Grey's Parl. Govt. new ed. p. 326 *n.* The resolution of Queen Victoria to bestow the hand of the Princess Louise upon a British subject was not taken 'without the advice of responsible ministers.' Mr. Gladstone, Hans. D. v. 204, pp. 173, 370.

[z] 2 Inst. (Coke), 186. Hearn, Govt. of Eng. p. 94.

[a] Park, Lectures on the Dogmas of the Const. p. 33; Lewis, in Hans. D. v. 165, p. 1486. The sovereign's signature is first appended, afterwards that of the Secretary of State. Rep. Com^e. on Pub. Accounts, 1865, v. 10, Ev. 2086, 2185.

[b] See Stubbs, Const. Hist. v. 3, p. 498.

[c] Colchester Diary, v. 3, pp. 603–614. Hans. D. v. 180, p. 340. See Welln. Desp. 3rd S. v. 5, pp. 557–560, 564, 567, 578. *Ib.* v. 8, pp. 168, 448.

the exercise of this privilege of the peerage should be limited by prudential considerations. One of these ought to be the utility of the course to be pursued; and the propriety of avoiding anything calculated to embarrass the relations between the sovereign and his ministers.[d] And no peer should take advantage of an audience with the sovereign to become the medium for presenting petitions or addresses from the people. Such documents can only be suitably presented through a secretary of state, or at a levée or public audience, in the presence of the king's ministers. A secretary of state is the constitutional channel for conveying the royal reply to such addresses. All letters or reports on public affairs intended for the government of Great Britain must be addressed to the king's minister, not to the sovereign personally; that is to say, to the secretary of state to whose department their subject-matter would probably belong.[e]

Communicates with foreign powers, &c. through ministers.

When Napoleon Bonaparte was First Consul of France, he disregarded this constitutional rule, and addressed a letter containing proposals of peace between France and England to the king himself; but it was acknowledged and answered by the foreign secretary. If it were fitting that the sovereign should receive such a communication without the interposition of a minister, there would be no reason why he should not deal with it on his own authority.[f]

In 1810, a violation of this rule was made the subject of parliamentary enquiry. Lord Chatham, being at the time a privy councillor and a cabinet minister, accepted the post of commander of the expedition to the Scheldt. On his return to England, he presented to the king, at a private interview, a narrative, drawn up

Official reports to be made through a minister.

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[d] See Welln. Desp. 3rd S. v. 7, p. 424; v. 8, p. 138.

[e] Ld. John Russell, *Ib.* v. 130, p. 190.

[f] Canning and his Times, by Stapleton, p. 47. See also the case of the autograph letter addressed by the Emperors of Austria and Russia, and the King of Prussia, to the Prince Regent, in 1815. Yonge, Life of Ld. Liverpool, v. 2, pp. 226-234. In 1847 the King of Prussia wrote a private letter to Queen Victoria relating to a political question of European affairs, which he requested his ambassador to deliver to her Majesty at a private audience. But, by the interposition of Prince Albert, this unintentional irregularity was corrected, the letter was read in the presence of the foreign secretary, and the reply discussed with and approved of by him. See Bunsen's Mem. v. 2, pp. 149-151.

by himself, of the conduct of the expedition, in which he criminated one of his colleagues in the ministry, and brought serious charges against an admiral who had been employed conjointly with himself in the expedition. He did this, unknown to any other cabinet minister, and requested the king not to communicate the paper to anyone, at least for a time. The document remained in the king's possession for nearly a month, when Lord Chatham asked to have it returned to him, in order that he might make some alterations in it. Upon receipt of the paper, Lord Chatham expunged a paragraph therein, and returned it to his Majesty. When the narrative again reached his hands, the king directed that it should be forwarded to the secretary of state, for the purpose of making it an official paper. It was afterwards transmitted to the House of Commons, when its peculiar history transpired.[g] The House called for the attendance of Lord Chatham at the bar, and questioned him as to whether he had, on any other occasion, made such a communication to the king; but he refused to answer, and, being a peer, could not be compelled to do so. Whereupon, on February 23, on motion of Mr. Whitbread, the House agreed to an address to the king (on division, against ministers), praying for copies of all reports or papers at any time submitted to his Majesty by Lord Chatham relative to the expedition to the Scheldt. During the debate Lord Chatham's conduct was strongly reprobated by Mr. Canning and other constitutional authorities, who contended that whilst his lordship, as a member of the cabinet, was equally responsible with the rest of his colleagues for the wisdom or policy of the said expedition, yet that in his capacity of commander he was responsible to the king, through the secretary of state; and that he was bound to present his report through the regular constitutional channel—namely, the secretary of state, or the commander-in-chief of the army. His position was compared with that of a minister at a foreign court, who, on being appointed to office under the royal sign-manual, is always formally instructed to conform to the orders and correspond with the secretary of state through whom he has received his appointment. Lord Chatham's instructions had been similarly prepared, and there was nothing in his peculiar position of privy councillor and cabinet minister to justify his passing by the secretary of state, in communicating with his Majesty upon a public matter.[h] In reply to their address, the king made known to the House of Commons the circumstances under which he had received Lord Chatham's communication, and stated that no other reports or papers concerning the Scheldt expedition had been presented to him by that nobleman.[i] On March 2, Mr. Whitbread submitted to the

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[g] Parl. D. v. 15, p. 482. [h] *Ib.* p. 581. [i] *Ib.* p. 602.

House resolutions of censure upon Lord Chatham for his unconstitutional conduct. The previous question was proposed thereupon, on the part of the administration, and negatived. But an amendment, proposed by Mr. Canning, in modified terms of censure, was accepted by Mr. Whitbread, and agreed to by the House. It was then moved that the resolutions be communicated to the king; but the opinion being generally entertained that the sense of the House in regard to this transaction had been sufficiently expressed by the recording of the resolutions upon the journals, and that it would not be consistent with the dignity of the House to proceed any further in the matter, this motion was withdrawn.[j] In consequence of this vote of the House, Lord Chatham retired from the ministry, and was succeeded as master-general of the Ordnance by Lord Mulgrave. A month elapsed after the formal resignation of Lord Chatham before his successor was appointed, during which interval, as is customary in respect to patent offices, his lordship continued to discharge the duties of the situation; abstaining, however, from advising in the cabinet, and from attending upon his Majesty with official reports, &c. Nevertheless, his continuing to perform official duty, under the peculiar circumstances of his position, gave rise to remarks in the House of Commons.[k] But the constitutional law which he had infringed had been sufficiently vindicated by his enforced retirement from office, and any further proceedings would have been unnecessary.[l]

Wrongful exercise of prerogative of mercy.

In 1830, a Mr. Comyn was sentenced to death, in Ireland, for arson. King George IV. was petitioned on his behalf, and was induced to write himself to the lord-lieutenant, signifying his pleasure that the sentence should be mitigated. Meanwhile, the lord-lieutenant, upon advice of the law officers, had decided that the law should take its course; and the prime minister (the Duke of Wellington) and home secretary (Mr. Peel) approved of this determination. Mr. Peel, indignant that the king should have exercised the prerogative of mercy without taking the advice or opinion of himself, or of any other responsible minister, addressed a strong remonstrance to his Majesty; ultimately, through the interposition of the prime minister, the king withdrew his order, and the original sentence was carried out.[m]

Secretary of state.

The constitutional channel of approach to the person of the sovereign is by means of a secretary of state, and it is through such an officer that the royal pleasure is communicated in regard to acts of govern-

[j] Parl. D. v. 16, p. 12 *.
[k] *Ib.* p. 735.
[l] Lewis, Adminis. p. 321. Walpole, Life of Perceval, v. 2, p. 72.
[m] Welln. Desp. Civil S. v. 6, pp. 553-577.

ment. Whenever the sovereign is temporarily absent from his usual places of residence, it is necessary that a secretary of state or other responsible minister should be in attendance upon him.[n]

At every interview between the sovereign and the minister of any foreign court, it is the duty of the secretary of state for foreign affairs to be present. Private communication between a king of England and foreign ministers is contrary to the spirit and practice of the British constitution. George III. invariably respected this rule. During the reign of his successor it was not so strictly adhered to; but upon the appointment of Mr. Canning as foreign secretary, he restored and maintained the constitutional usage.[o]

The king must always act through a minister.

'It is quite unusual that a foreign sovereign should write to the sovereign of England on politics,'[p] or affairs of state; for as the British monarch can be no party to an act of state personally, but only through the instrumentality of others, who are responsible for the act, so he can neither sign a treaty nor accede to the terms of a treaty personally, in the first instance. He negotiates, concludes, and signs by plenipotentiaries, whom he empowers to do those acts. He afterwards ratifies what they have done, if he approves of it; but to this ratification the Great Seal must be attached.[q]

Moreover, it is not usual for the king of England to receive from other sovereigns letters upon public questions which do not pass through the hands of his ministers; and sometimes such letters have been returned, because copies were not sent (with the sealed letter) for the information of the minister. It is still more un-

[n] Macaulay, Hist. of Eng. v. 4, p. 9. The duty of constant attendance on the sovereign used to be taken by the secretaries of state in turn; but within the last few years this duty has been taken by all the cabinet ministers in turn. E. A. Freeman, Inter. Rev. v. 2, p. 375.

[o] Stapleton, Canning and his Times, p. 433.

[p] Ld. Palmerston' in Bunsen's Mem. v. 2, p. 150.

[q] Yonge's Life of Ld. Liverpool, v. 2, p. 232.

usual and improper for the king to answer a letter from another sovereign without the advice of his minister, who, whether he advises or does not, is responsible if he knows of the letter being written.[r]

Does not act in his personal capacity.

While the sovereign, as the fountain of justice and the source of all political authority and jurisdiction in the realm, is presumed to be personally present in every court of law, and especially in the High Court of Parliament, justice must be dispensed and laws enacted in the king's name, in strict conformity to the laws, usages, and customs of the constitution. And by the common law itself, and more especially since the formal recognition of the doctrine of ministerial responsibility, the sovereign of England is constitutionally debarred from the public or personal exercise of any functions of royalty, except such as are necessary to express the royal pleasure in regard to acts of state which have been advised or concurred in by constitutional ministers. For example, although in the eye of the law the king is always present in all his courts, he is not above the law, and cannot personally assume to decide any case, civil or criminal, but must do so by his judges.[s] And when any judicial act is by any Act of Parliament referred to the king, it is understood to be done in some court of justice according to the law.[t] Even the prerogative of mercy cannot now be exercised, except under the direction of ministers.[u] Neither can the sovereign constitutionally make any appointments to office without previously communicating with the prime minister, and

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[r] Wellh. Desp. Civil S., v. 6, pp. 313, 319. Martin, Pr. Consort, v. 3, pp. 39, 45. 'All letters received by the Queen and Prince Consort from foreign potentates, and all answers to them, were shown to the Foreign Secretary or to the Prime Minister.' *Ib.* v. 4, p. 329. See Amos, Fifty Years' Eng. Const. p. 328.

[s] Broom's Const. Law, pp. 145-148. And see Hearn, Govt. of Eng. pp. 66-74.

[t] Stephen's Blackstone, v. 2, p. 483; 2 Co. Inst. p. 186; and see Fischel, Eng. Const. p. 238; and Ld. Camden's Judgment in Shipley's case, wherein the king had been appealed to, as visitor of a college which was a royal foundation.

[u] See Colchester Diary, v. 3, p. 297. Martin, Pr. Consort, v. 1, p. 141. *Ante*, p. 269.

acting with his sanction and consent.[v] And though the sovereign be present in the House of Lords at any time during the deliberations of that House, seated upon the throne, yet his presence would now be considered a departure from constitutional usage, which forbids the sovereign to interfere or take part in any of the proceedings of Parliament, except when he comes in state for the exercise of the royal prerogatives.[w] Up to the reign of Queen Anne it was customary for the sovereign to attend debates in the House of Lords as a spectator, and his presence was duly recorded in the journals; but since the accession of George I. this questionable practice, which might be used to overawe the assembly and influence their debates, has been wisely discontinued.[x]

Upon the solitary occasion of H.R.H. Prince Albert attending a debate in the House of Commons, in 1846, so 'many moderate men on both sides' were disquieted by the incident of his presence that he never went again.[y]

And although the king is the acknowledged head of the military forces of the empire, no English monarch has taken the field in person since the siege of Dettingen by George II. 'A contrary practice,' says a recent writer on the English Constitution, 'would not accord with modern parliamentary usage.'[z]

The king anxious to act as commander-in-chief.

Upon the death of H.R.H. the Duke of York, in January 1827, his Majesty King George IV. expressed an intention of personally assuming the command of the British army. But the premier (Lord Liverpool) said that such a thing 'was preposterous, and that he would never consent to it.' Sir R. Peel also spoke of it as 'almost incredible,' and 'as pregnant with unceasing embarrassment to the government.' Accordingly, upon the advice of Lord Liverpool, the office was conferred upon the Duke of Wellington.[a] But upon the break up of this administration, and the nomination of

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[v] Welln. Desp. Civil S. v. 6, p. 181.

[w] Hearn, Govt. of Eng. pp. 58, 59.

[x] May, Parl. Prac. ed. 1883, p. 503.

[y] Disraeli, Life of Ld. G. Bentinck, 4th ed. pp. 65, 106. Martin's Pr. Consort, v. 1, p. 321.

[z] Fischel, Eng. Const. p. 139. And see Macaulay, Hist. of Eng. v. 4, p. 10.

[a] Welln. Desp. 3rd S. v. 3, pp. 531–535.

Mr. Canning to be prime minister, in April 1827, the Duke of Wellington resigned. Whereupon the king again declared that he should take the command of the army into his own hands. The reason he alleged for such a proceeding was 'the impossibility of selecting any member of the royal family or any other general officer of sufficient rank' for the place. Mr. Canning appears to have refrained from openly opposing the king's proposal, although he urged his Majesty to adopt some other arrangement. Anyhow, the office remained vacant until the following August, when, upon another change of ministry occurring, the Duke of Wellington agreed to resume the post.[b]

Development of ministerial responsibility.

The great principle of ministerial responsibility for every act of sovereignty, and its legitimate result, in limiting the personal action of the sovereign in state affairs to formal and representative occasions, is a natural consequence of the system of parliamentary government which was introduced by the Revolution of 1688. It is based upon the fundamental doctrine that the king himself 'can do no wrong,' a maxim the true meaning of which has been already considered.[c] The doctrine of ministerial responsibility has been contended for, more or less emphatically, from an early period; although we do not find it distinctly asserted, as it is now understood, until the reign of Queen Anne.[d] During the earlier part of the reign of George III. this doctrine continued in an unsettled state. Thus, in 1770, we find Dr. Johnson, who was a professed Tory, arguing that 'a prince of ability might and should be the directing soul and spirit of his own administration—in short, *his own minister*, and not the mere head of a party; and then, and not till then, would the royal dignity be sincerely respected.'[e] This passage seems to claim for the king that he should govern as well as reign. In Russell's 'Memorials of Fox,' under the date of 1778, it is stated that about this time Lord George Germaine asserted in the House of Commons 'that the king was *his own minister*, which

[b] Wellin. Desp. 3rd S. v. 3, pp. 615, 646, 661; v. 4, pp. 66, 96.
[c] See *ante*, p. 263.
[d] *Ib.* p. 264.
[e] Boswell's Johnson, v. 3, p. 131.

Charles Fox took up admirably, lamenting that his Majesty was *his own unadvised minister*.'[f] But, as we have already pointed out, the Whigs and Tories at this time differed radically in their ideas upon this subject, and neither party held what is now considered to be sound doctrine on the subject. The Whigs arrogated to themselves the right of nominating all the king's ministers, not excepting the prime minister; whilst the Tories, going to the other extreme, claimed for the king, on his own personal responsibility, the right to select all the persons who should govern the state.[g] With these discordant ideas and rival claims, which are now admitted by all parties to be equally untenable, it is no wonder that the true principles of government should have been so frequently disregarded on every side. Ere long, however, they were amply vindicated. During the memorable debates of 1807, when the king dismissed his ministers because they refused to sign a pledge which he had no right to exact of them, more intelligent and enlightened opinions as to the relative position of the king and his ministers were expressed by all the leading statesmen in Parliament, of every creed. On this occasion we find it distinctly enunciated as incontrovertible maxims: '1. That the king has no power, by the constitution, to do any public act of government, either in his executive or legislative capacity, but through the medium of some minister, who is held responsible for the act; 2. That the personal actions of the king, not being acts of government, are not under the cognisance of law.'[h] This is now universally accepted as sound doctrine.

Misconception of the true principles of government.

The king and the constitution.

But if the exercise of personal power by the sovereign be thus limited and circumscribed, it may be thought

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[f] Russell's Fox, v. 1, p. 203.

[g] *Ante*, p. 125; and see Ed. Rev. v. 18, p. 46. Mr. Allen, on Royal Prerogative.

[h] Ld. Selkirk, Parl. D. v. 9, p. 381; and Mr. Adam, *Ib.* v. 16, p. 2 * * *; and see Maley's William IV. v. 2, p. 134.

that the monarchy of England exists only in name, and that the authority of the king is a mere legal fiction, to express the dominion exercised by certain public functionaries who have obtained possession of supreme power. Such an idea is very erroneous; for while the usages of the constitution have imposed numerous restrictions upon the crown in the conduct of state affairs, these restrictions have been established to secure good government and to protect the liberty of the subject, and not with a view to reduce the authority of the crown to a nullity.

The kingly office no fiction.

Before attempting to define the nature and limit of the authority which rightfully appertains to a reigning monarch,[1] it may be profitable to point to a few examples indicative of the extent of interference in affairs of state which has been claimed and exercised by English sovereigns since the accession of the House of Hanover. Our illustrations upon a subject so delicate, and upon which so little is recorded, will necessarily be very few. Nevertheless, they may serve to mark the growth of political opinion on the subject, and to show how much, in this as in other matters, depends upon the force of individual character.

Personal acts of government since Queen Anne's reign.

The dogma of the impersonality of the sovereign is the offspring of the Revolution of 1688, although, as we have already seen,[1] it found no favour, either in theory or practice, in the eyes of William III. It began to be asserted as a constitutional principle in the reign of Queen Anne, who, unlike the great Elizabeth, had no special administrative capacity, although she clung to the exercise of power with great tenacity. The weakness and inexperience of a female sovereign, combined with the acknowledged necessity for governing by means of a ministry acceptable to Parliament, gave increased weight to the advocates of this doctrine. Though her

Impersonality of the sovereign.

For which definition, see *post*, p. 305.

[1] *Ante*, p 108.

personal predilections were in favour of the Tories, Queen Anne was compelled, for a great part of her reign, to accept a Whig ministry. Distrusting her own judgment, she surrendered herself far too implicitly to the counsels of the leading spirit whom for the time she admitted as her guide. And yet, like all her predecessors, she kept in her own hands the reins of government, jealous, as such feeble characters usually are, of those in whom she was forced to trust. Obstinate in her judgment, from the very consciousness of its weakness, she took a share in all business, frequently presided in meetings of the cabinet, and sometimes gave directions without their advice.[k] In the impeachment of Lord Oxford by the Commons, for alleged treasonable acts, he alleged in his defence that he had acted under the immediate commands of the queen, in the matter specially complained of, using these words: 'My lords, if ministers of state, acting by the immediate commands of their sovereign, are afterwards to be made accountable for their proceedings, it may one day or other be the case of all the members of this august assembly'[l]—a species of defence similar to that urged by Lord Somers in the case of the Partition Treaty, but which was undoubtedly irregular and insufficient.

Queen Anne

George I. and II.

Throughout the reigns of the first two Georges, the principle of the royal impersonality continued to make progress,—but rather through the incapacity for the details of administration arising from the foreign education of both these monarchs, and the force of circumstances which compelled them to entrust to the leaders of the dominant Whig party authority which they felt incompetent to exercise, than because either the nation or the political philosophers of the day were prepared to accept it in theory.[m]

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[k] Hallam, Const. Hist. v. 3, pp. 314, 315. Stanhope, Queen Anne pp 38, 542.

[l] Parl. Hist. v. 7, p. 105.

[m] See Quar. Rev. v. 105, Art. 6.

It is a fact that would be hardly credible, were it not so well attested, that George I., being incapable of conversing in English, as his chief minister, Sir Robert Walpole, was of conferring with him in French, they were compelled to hold communication with each other in the Latin language.[n] It is impossible that, under such circumstances, the king could have obtained much insight into the domestic affairs of England, or become familiarised with the character of the people over whom he had been called to rule. 'We know, indeed, that he nearly abandoned the consideration of both, and trusted his ministers with the entire management of the kingdom, content to employ its great name for the promotion of his Electoral interests. This continued, in a less degree, to be the case with his son, who, though better acquainted with the language and circumstances of Great Britain, and more jealous of his prerogative, was conscious of his incapacity to determine in matters of domestic government, and reserved almost his whole attention for the politics of Germany.'[o] George I.

In describing the character and conduct of the first two Georges, Hallam intimates of both of them that they forced upon their ministers the adoption of a foreign policy adverse to the interests of England and directed to the aggrandisement of Hanover: but that, so far as domestic politics were concerned, they surrendered almost everything into the hands of their ministers, so that during their reigns 'the personal authority of the sovereign seems to have been at the lowest point it has ever reached.'[p] But, so far as regards George II., this conclusion is contradicted by the researches of later writers. Although this monarch, equally with his predecessor, rendered the interests of his British dominions subservient to those of his German principality, he was, George II

[n] Coxe's Walpole, v. 1, p. 266; H. Walpole's Works, v. 4, p. 476; and see Campbell's Chanc. v. 4, p 340.

[o] Hallam, v. 3, pp. 389, 390.

[p] *Ib.* p. 393.

George II. nevertheless, fond of the exercise of arbitrary power, and unwilling to yield his prerogative into the hands of ministers. By the publication of the Life of Lord Hardwicke, for many years one of the principal advisers of George II., great light has been thrown upon the political history of this reign.

On the occasion of certain ministerial changes, which had been brought about by the leading members of the cabinet in order to strengthen their position in Parliament, a curious conversation is reported to have taken place between Lord Chancellor Hardwicke and the king, in which his Majesty declared his aversion to the new men who had been introduced into the ministry, and asserted that he had been 'forced' and 'threatened' into receiving them. The chancellor deprecated the use of such language, saying that 'no means had been used but what have been used at all times—the humble advice of your servants, supported by such reasons as convinced them that the measure was necessary for your service.' After some further explanations, the chancellor observed, 'Your ministers, sire, are only your instruments of government;' to which the king replied, with a smile, 'Ministers are the king in this country.'[q] But while the force of circumstances compelled the king to give way on this occasion, the 'Hardwicke papers' afford frequent examples of his active and successful interference in the government of the country. The interests of Hanover, it is true, were ever uppermost in his thoughts; but he seems to have possessed great discernment of character, both in regard to the abilities of the men whom he selected for his ministers, and the degree of confidence he could safely repose in them. 'To a large extent,' says the biographer of Lord Hardwicke, 'he was not only the chooser of his own ministers, but the director also of all the most important measures propounded by

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[q] Harris, Life of Hardwicke, v. 2, pp. 106–109.

them; and into every political step taken he seems to have entered fully, even to the very details. As a politician, his great fault, especially for a king, was his being so decided a partisan. He was the sovereign and the head, in fact, not of the English people, but of the Whig party.'[r]

But the peers and landed gentry of this period were possessed of enormous political influence, and the united efforts of the leading Whig families gave them an authority greater even than that of king and commons combined. So that 'when George III. came to the throne, the English Government was, in practice, assuming the form of an exclusive oligarchy,' in which the king, though nominally supreme, was entirely bereft of substantial power.[s]

George III.

Naturally ambitious and self-reliant, the youthful sovereign began his reign with a determination to exercise to the fullest possible extent the functions of royalty. Born a Briton, and prepared by careful training for the duties of his exalted station, he became at once popular with the country at large, who were ready to sustain him in any attempt to magnify his office. In a previous chapter we have had occasion to dwell at considerable length upon the character of George III.,[t] and to point out several instances of his departure from the line of conduct which should characterise a constitutional king, and our further observations on this subject must necessarily be brief. Regarded in the light of the relations which now exist between the sovereign and his responsible advisers, the conduct of George III. would call for unqualified censure, from his systematic endeavours to govern by the exercise of his personal authority, and to absorb in himself the power and patronage of the state. Such practices are incompatible with the acknow-

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[r] Harris, Life of Hardwicke, v. 3, p. 222; and see 519. p.

[s] Massey, Reign of George III. v. 1, pp. 64, 519.

[t] *Ante*, pp. 111-124.

George III

ledgment of parliamentary government, and would be neither tolerated nor attempted in our own day. Nevertheless, before we condemn George III. for pursuing a policy at variance with our present political ideas, we should remember that the theory of royal impersonality was but partially understood when he ascended the throne. And not only was this particular theory still unrecognised as a constitutional principle, but the practice of his immediate predecessors, who had voluntarily abstained, for various reasons, from much personal interference with the details of government, had fallen into disfavour. The country was heartily sick of the victories of court intriguers, and the monopoly of power in the hands of certain 'Revolution families;' and the young monarch, in obeying his mother's emphatic exhortation of 'George, be a king!' did but respond to the popular will, although the experience of the first year of his reign should have sufficed to convince him of its unstable and misleading character.[u] The great error of George III. was a love of power, which habitually tempted him to ignore the constitutional restraints of a limited monarchy. Notwithstanding his moral and exemplary life, his sympathies with the popular prejudices, and his genuine endeavours to govern for the good of all classes of his subjects,—his frequent interference in the smallest details of administration and consequent disregard of the obligations of responsible government, caused him to suffer during his lifetime from the violent attacks of political partisans, and has loaded his memory with an amount of calumny and misrepresentation from which it is only now beginning to recover.[v]

Lord Campbell says of George III., that he 'certainly was a prince possessed of very valuable qualities; and it is only fair to state that everything discovered concerning him since his death, has

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[u] Quar. Rev. v. 105, Art. 6.

[v] Brougham, Brit. Statesmen (ed. 1858), v. 1, p. 13. And see Edison's Commentary on Brougham's 'Character of George III.' (London, 1860).

tended to raise our opinion both of his abilities and of his generosity.'[w] George III.

But if we make due allowance for the difficulties of his position, and the temptations to an exaggerated idea of his personal authority natural to a time when the sovereign was still permitted to govern as well as reign; we must acquit him of any intentional violation of the constitution; and at the same time admit that his integrity of purpose, and rigid adherence to the line of duty, according to his lights, entitle him to be regarded as 'a patriot king.' We may unreservedly condemn his unconstitutional acts, but should yet be willing to confess that much that was faulty in his conduct was 'simply the natural result of a complicated position, still undefined, and the working of a spirit as yet inexperienced in government, and seeking with hesitation its course and its friends.'[x] During an unusually protracted reign, George III. devoted himself to the fulfilment of his royal duties with the most scrupulous and constant care, diligently superintending every movement of the great political machine.[y]

The following instances of the direct interference of George III. in the details of government have been gathered from the pages of contemporary historians: some of them being rather inconsistent with modern ideas of the duties of a sovereign.

His personal acts of government.

Shortly after his accession to the throne, the king informed his ministers that it was his wish that Lord Holdernesse, then one of the secretaries of state, should retire upon the wardenship of the Cinque Ports, and that the Earl of Bute should be appointed secretary in his stead. With some reluctance the ministry acquiesced in this arrangement.[z] In 1792 his Majesty conferred upon Mr. Pitt the office of Lord Warden of the Cinque Ports, unsolicited by that minister, and with a declaration that he would receive no

Lives of the Chanc. v. 7, p. 341.

[x] This felicitous phrase was applied by M. Guizot to the conduct of Louis Philippe after his elevation to the throne of France.—Guizot's Mem. v. 2, p. 45.

[y] Mahon, Hist. of Eng. v. 4, p. 310.

[z] Harris, Life of Hardwicke, v. 3, p. 242; but see a different account of this transaction in Rose, Corresp. v. 2, p. 191.

Personal acts of George III.

recommendation in favour of any other person.[a] The king was evidently determined to regard this post 'as his one private piece of patronage,' for after Mr. Pitt's death he conferred it upon Lord Hawkesbury, under precisely similar circumstances.[b] It was with great difficulty that Mr. Pitt obtained the king's consent to confer a bishopric and deanery upon his tutor and friend, Dr. Pretyman;[c] and when Mr. Pitt recommended his friend and biographer, Dr. Tomline, for promotion to the see of Canterbury, the king insisted upon appointing Dr. Manners-Sutton, notwithstanding all the solicitations of his minister.[d] The king refused to confer a dukedom upon Earl Temple, although requested to do so by Mr. Pitt, and, moreover, declared his determination to grant no more dukedoms except to princes of the blood.[e] On the other hand, several examples of the rightful exercise of kingly authority on the part of George III. may be profitably cited.[f] *E.g.*, upon the resignation of the elder Pitt, in 1761, the king expressed his concern at the loss of so able a minister, and made him an unlimited offer of any reward in the power of the crown to bestow. In 1781, when the commander-in-chief carried him a packet of military commissions to be signed, the king, on looking over the list, observed one person appointed captain over an old lieutenant. Referring to some private memoranda of his own, which contained particulars very much to the credit of the old veteran, his Majesty at once directed that he should be promoted to the vacant company, without purchase. We have the authority of Mr. Wynn for stating that from the close of the American war until the breaking out of hostilities with France, the king's pleasure was taken by the secretary-at-war upon every commission granted in the army; and that throughout Mr. Pitt's administration, and so long indeed as his Majesty was capable of attending to business, 'every act and appointment was submitted to him, not nominally, but really for the purpose of his exercising a judgment upon it.'[g] A notable instance of the king's firmness occurred in 1780, during the prevalence of the great anti-popery riots in London. His Majesty was presiding at a Privy Council, to which all who had a right to sit had been summoned. Ministers were timorous and vacillating in advising the steps that should be taken to quell the disturbances, when the king interposed; and after taking the opinion of the attorney-general, directed that an Order in Council should be drawn up for the guidance of the proper authorities in the emergency, to

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[a] Stanhope's Pitt, v. 2, p. 160.

[b] Yonge, Life of Ld. Liverpool, v. 1, p. 209.

[c] Stanhope's Pitt, v. 1, p. 322; App. xx.

[d] *Ib.* v. 4, p. 252. Rose, Corresp. v. 2, pp. 82-91.

[e] Stanhope's Pitt, v. 1, p. 164. Fitzmaurice, Life of Ld. Shelburne, v. 3, p. 419.

[f] Edison, Geo. III. pp. 26, 44, 49.

[g] Parl. D. v. 22, p. 334.

which he instantly affixed the sign-manual.[h] Lord Eldon often declared that he thought his old master George III. had more wisdom than all his ministers conjointly; and that he could not remember having taken to him any state-paper of importance which he did not alter, nor one which he did not alter for the better. This peculiar sagacity he attributed not so much to the natural qualities of the king as to his immense opportunities of gaining knowledge by an experience in state affairs, which was far greater than that of the oldest of his ministers.[i]

George IV. had not the weight of personal character that belonged to his father. Naturally of an indolent disposition, he was called to the throne too late in life to become thoroughly acquainted with the duties of his office, or to care for burthening himself with the details of government. He was unpopular with the nation, having alienated from himself their respect and good will by his conduct as a prince. He was indifferent to the exercise of political power, except when his own feelings or interests were concerned, when he could be as imperative as his father. He strenuously opposed the recognition of the independence of the Spanish South American provinces, and also the granting of Roman Catholic emancipation in Great Britain, but was compelled to acquiesce in the policy of his cabinet upon these questions. Otherwise, he seldom differed in opinion with his responsible advisers, and was content, for the most part, to leave the functions of administration in their hands.[j] 'It may, therefore, be said, that from the beginning of his regency in 1811 to the close of his reign in 1830, the regal influence was limited to the strict exercise of the prerogative. George IV. had no personal influence: instead of his popularity supporting the ministry, the difficulty was for the ministry to support his unpopularity, and to uphold

George IV.

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[h] Adolphus, Reign of Geo. III. v. 3, p. 144.

[i] Campbell's Chanc. v. 7, p. 253, *n.*

[j] May, Const. Hist. v. 1, p. 99. And see the king's correspondence with his ministers in Yonge, Life of Ld. Liverpool; and in Wellin. Desp. 3rd s.

George IV. the respect for the crown when it encircled the head of such a sovereign.'[k]

Constable of the Tower.

In 1826, the dignified office of Constable of the Tower, which 'is reserved for the king's exclusive disposal,' was unexpectedly conferred by his Majesty upon the Duke of Wellington.[l] Upon a vacancy occurring in the office of adjutant-general, the king wrote to the prime minister notifying his intention to appoint his private secretary, Sir Herbert Taylor, to the post.[m] Taking offence at a speech of Denman's at the queen's trial, the king persistently refused, for several years, to confer upon that eminent lawyer the rank of king's counsel; until at length, through the perseverance of the Duke of Wellington (then premier) in 1828, the king consented to grant him this dignity. The duke remarked that gaining this point was the toughest job he had had in his life.[n] But though he yielded, the king afterwards declared that no consideration would ever induce him to admit Mr. Denman into his presence.[o]

George IV. was obliged to be more amenable to constitutional usage than his father, in the matter of appointments to office. In 1821, he undertook to promise a vacant canonry of Windsor to a young and inexperienced clergyman. Lord Liverpool (the prime minister) respectfully, but firmly, informed the king that he could not reconcile it with his 'public duty' and 'official responsibility,' 'to conform to his Majesty's wishes,' in this instance. The king was very angry. But the minister would not yield. He declared that in this, as in all similar cases, any 'expectation which might have been personally held out by the sovereign was subject to the responsibility of his minister; and that it must be a sufficient answer on such an occasion that the appointment had been obstructed in a quarter which could not, by the laws of the country, be passed by.'[p]

A curious account of the disagreement between George IV. and his ministers in the matter of Queen Caroline has been already given in a former chapter.[q] On this occasion, likewise, the king was reluctantly obliged to yield his personal wishes to the exigencies of his position, and to permit his ministers to conduct that painful and embarrassing affair according to their own convictions of that which it might be feasible to ask the Parliament to sanction. But a circumstance occurred in 1811, which shows that the king could stand upon his prerogative when he thought proper. The see of Oxford became vacant, and Mr. Perceval, the prime minister, waited upon his royal master, with a recommendation that the bishopric should

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[k] Lewis, Adminis. p. 421.
[l] Wellin. Desp. 3rd S. v. 3, p. 496.
[m] *Ib.* v. 4, pp. 668-672.
[n] Arnould, Life of Denman, v. 1, c. xvi.
[o] *Ib.* p. 435.
[p] Life of Ld. Liverpool, v. 3, pp. 150-154.
[q] *Ante*, p. 128.

be conferred upon Dean Legge. The prince peremptorily refused, and declared his intention of appointing Dr. Jackson. Mr. Perceval urged that it had been 'the positive and declared intention' of the king to give the appointment to Dean Legge; whereupon the prince reiterated his determination 'to make his own bishop,' and desired that he might 'never more hear what were the king's wishes upon such subjects through a third person.'[r] Dr. Jackson was accordingly nominated to the see, but he held it only four years. On his death, which occurred in 1815, the bishopric was conferred upon Dean Legge.[s]

William IV.

William IV. was an amiable monarch, of an honest and truthful disposition, but deficient in strength of character. His letters to Earl Grey, his prime minister, 'supply abundant evidence of the conscientious industry with which he must have laboured to make himself master of the public questions of the day, so as to be able efficiently to perform in this respect his duty as a sovereign.'[t] He ascended the throne at an advanced period of life, and found himself unable to cope successfully with the embarrassing questions which arose during his short but eventful reign. Averse to parliamentary reform, and fearful of its consequences, he nevertheless gave a reluctant consent to the great experiment. But ere long his mind underwent a reaction; he withdrew his confidence from the statesmen by whom that measure had been accomplished, and attempted to form a Tory government. But the endeavour proved abortive. He learnt to his chagrin that the preponderance of power was now so firmly established in the House of Commons, that the mere prerogative and influence of the crown were insufficient to effect a change of administration, unless seconded by the voice of that assembly, or by the unequivocal expression of popular opinion.[u]

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[r] Buckingham, Regency, v. 1, p. 172.

[s] Haydn, Book of Dignities, p. 363.

[t] Earl Grey, Corresp. with William IV. v. 1, pref. pp. viii. xiv. And see his Majesty's Memoir, addressed to Sir R. Peel in 1835, of his conduct and principles from the period of his accession in 1830 to the change of ministry in Jan. 1835; in Stockmar's Mem. v. 1, pp. 314-350.

[u] See *ante*, p. 194; Bagehot, Eng. Const. p. 284.

William IV.

Two instances may be cited wherein William IV. took upon himself to interfere personally in political affairs without previous consultation with his ministers: once in 1832, when, in the interest of ministers themselves, and in furtherance of their public policy, he caused a circular letter to be addressed by his private secretary to the Opposition peers, urging upon them to cease from any further resistance to the Reform Bill, so as to permit the passing of that measure in the House of Lords without the necessity for creating a new batch of peers in order to carry the Bill—a stretch of the prerogative to which his Majesty had been induced by his ministers to consent, if necessary. This letter was circulated by the personal command of the king, and was undoubtedly an irregular interference with the freedom of Parliament.[v] Again, in 1834, his Majesty gave public expression to his alarm for the safety of the Established Church in Ireland, in a remarkable reply to an address from the prelates and clergy of Ireland, which he delivered without first communicating with his responsible advisers.[w] This speech is said to have been delivered extempore, and to have been quite unpremeditated; but Maley, in his Recollections of this reign (v. 2, p. 133), gives reasons for the belief that it was written for the king by some secret adviser. But these were exceptional cases, arising out of the prevalence of political excitement, both at home and abroad, during the period in question, and by which the king himself was carried away to the commission of acts which were irregular and indefensible, however they may be excused by a consideration of the integrity of purpose and solicitude for the public welfare by which they were dictated.

Upon the resignation of Sir R. Peel's short-lived administration, the king reluctantly accepted another Whig ministry, presided over by Lord Melbourne. But though he did not always disguise his disinclinations towards them, and sometimes strenuously opposed their measures,[x] yet we have the assurance alike of Whig and Tory statesmen that 'His Majesty uniformly acted with scrupulous fidelity towards his advisers, whatever might be their political bias;'[y] and in the two Houses of Parliament, after the king's decease, the leading politicians, without respect to party, vied with one another in

[v] See *ante*, p. 192.

[w] Ann. Reg. 1834, p. 43.

[x] See Lord Broughton's Recollections, in Ed. Rev. v. 133, pp. 317-324. Torrens, Life of Melbourne, v. 2, c. v.

[y] Peel's Mem. v. 2, p. 16 Earl Grey, Corresp. v. 1, pp. vii ix.

bearing testimony to his exemplary conduct as a constitutional sovereign.[z]

The following instances of the independent exercise of judgment by William IV., in matters of prerogative, have come under our notice. He refused to confer a peerage upon Admiral Sir J. Saumarez, notwithstanding the urgent and reiterated recommendations of the premier (Earl Grey) but finally consented upon learning the acute distress which the disappointment occasioned to this old and deserving officer.[a] He peremptorily declined to give the royal assent in person to the Reform Bill, though strongly urged to do so by his ministers.[b] When a member of the administration waited upon the king to recommend that Captain Marryat might receive the royal licence to wear an order which had been conferred on him by the king of the French, his Majesty declined to comply with the request; assigning, as the ground of his refusal, his disapprobation of a book, on the impressment of seamen, which had been written by Marryat.[c]

Queen Victoria.

Since the accession of our present queen, the personal predilections of the sovereign in respect to an existing administration have never been brought into public view. While she has abated nothing of the legitimate influence and authority of the crown wherever it could be constitutionally exercised, her Majesty has scrupulously and unreservedly bestowed her entire confidence upon every ministry in turn with which public policy, or the preference of Parliament, has surrounded the throne.[d] 'It is well known,' says a recent political writer, 'that her Majesty has habitually taken an active interest in every matter with which it behoves a constitutional sovereign of this country to be concerned; in many instances her opinion and her will have left their impression on our policy.'

For example, in the year 1861, at the suggestion of the late Prince

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[z] Knight, Hist. Eng. v. 8, p. 377.

[a] Earl Grey, Corresp. v. 1, pp. 330, 350.

[b] *Ib.* v. 2, pp. 462–467.

[c] Memoir of Marryat, prefixed to Bohn's ed. of his 'Pirate.'

[d] See Stockmar's Mem. v. 2, pp. 52–55. Ld John Russell, Hans. D. v. 130, p. 182. Earl Granville and the Duke of Richmond, *Ib.* v. 208, pp. 1069, 1070. This was in accordance with Prince Albert's idea of the duty of the queen towards her ministers.—*Ib.* v. 165, p. 44.

Queen Victoria.

Consort, the forbearance and firmness of our gracious queen were exercised to require that the language of an important despatch—calling for the surrender, by the United States Government, of certain persons who had been illegally taken from the *Trent*, a British vessel, by an American ship-of-war—should be so modified as to make the demand as conciliatory as possible, in order to avert the prospect of war with a kindred people.[e]

Upon the transfer of the government of India from the rule of the East India Company to that of the crown, in 1858, the queen made numerous valuable suggestions in regard to the new constitution for India, the direction of the Indian army, and the policy to be pursued towards the natives, most of which were adopted by ministers. One important suggestion, which the cabinet would not accept, was afterwards forced upon them by public opinion and by Parliament.[f] In 1859, her Majesty differed with the prime minister and the foreign secretary upon a question of foreign policy. The whole cabinet were then appealed to, when the queen's opinion was sustained.[g]

Her wise exercise of prerogative.

'But in no instance has the power of the crown been so exercised as to expose it to check, or censure, or embarrassment of any kind.[h] It may be asserted without qualification, that a sense of general content, of sober heartfelt loyalty, has year by year gathered around the throne of Victoria.'[i] The present writer would add to this his sincere conviction, that attachment to the person and throne of our gracious queen is not confined to the mother-country, but extends with equal if not greater intensity to the remotest bounds of her immense empire; and that few could be found, even in lands that owe her no allegiance as a sovereign, who would not willingly unite in a tribute of respect and admiration for Victoria, as a woman, a mother, and a queen.

Death of the Prince Consort.

In the year 1861, her Majesty and the nation sustained a grievous loss in the death of the Prince Consort. The queen herself in a few lines which she has caused

Earl Russell in Hans. D. v. 178, p. 72. Martin's Pr. Consort, v. 5, pp. 118, 426.

[f] Martin's Pr. Consort, v. 4, pp. 200-205, 232, 284, 310.

[g] *Ib.* pp. 458, 484, 486.

[h] See Earl Russell, in Hans. D. v. 175, p. 615.

[i] Ed. Rev. v. 115, p. 211. Mr. Foster, in Hans. D. v. 228, p. 150.

to be inserted in a published collection of his Royal Highness's speeches, bore a tender and touching testimony to 'the ever-present, watchful, faithful, invaluable aid which she received from the Prince Consort in the conduct of the public business;' thereby 'proclaiming the irreparable loss to the public service, as well as to herself and to her family, which the prince's death has occasioned.'[j]

Shock to her Majesty occasioned by the death of the Prince.

The shock of this sudden calamity compelled the Queen to withdraw, for a season, into retirement; and she has never since been able to resume to the full extent as before her public and ceremonial duties. But while her long-continued seclusion has been a source of universal regret, and even of complaint, 'it is the only reproach which her people have ever addressed to her.' Ten years after this great affliction befell her, two of the leading statesmen of England publicly testified to her unabated zeal and efficiency in the performance of all other duties appertaining to her exalted station. Thus Earl Granville said: 'I do not know any time of her life when her Majesty has given more attention than she does at present to the current business of the state, or when the interest she takes in all parliamentary and administrative measures, the knowledge she takes care to possess on all important measures, whether home or foreign, and the supervision she exercises over all appointments to be made, and honours to be distributed, have been more strikingly shown.'[k] And a few weeks afterwards, Mr. Disraeli took occasion to observe that while her Majesty was at present unable, on account of her health, 'to resume the performance of those public and active duties which it was once her pride and pleasure to fulfil,' yet that 'with regard to those much higher duties which her Majesty is called upon to perform, she still performs them with a punctuality and a

Her unabated attention to affairs of State.

[j] Prince Albert, Speeches, &c. p. 67.

[k] Hans. D. v. 208, p. 1069.

precision which have certainly never been surpassed and rarely equalled by any monarch of these realms.'[l]

During the present reign three questions, previously undetermined, and that intimately affect the personal rights of the sovereign, have been discussed and disposed of. They will fittingly claim our attention before we proceed to define the constitutional position of the crown in public affairs. They concern—

1. The appointment of officers of the royal household.
2. The right of the sovereign to employ a private secretary.
3. The constitutional position of a prince consort.

1. *As to the Appointment of Members of the Household.*

Appointments in the royal household controlled by ministers.

Owing to the gradual introduction of the usages which have been incorporated by time into the unwritten law of the British Constitution, it was not until the end of the reign of George II. that it became customary to make alterations in the household establishment of our sovereigns upon a change of ministry.[m] But it is a fundamental principle of parliamentary government, that 'the responsible servants of the crown are entitled to advise the crown in every point in which the royal authority is to be exercised;'[n] and nothing could tend more to enfeeble an administration than that certain high offices, held during pleasure, should be altogether beyond their control. Accordingly, from the accession of George III. it became a recognised practice to concede this privilege to every successive administration.

Thus we find that when George III. dismissed the North ministry, in 1782, he was obliged to dismiss the Earl of Hertford from the office of lord chamberlain, which he had held for fifteen years;

[l] Speech at Hughenden, Sept. 26, 1871.

[m] Parl. D. v. 23, p. 412.

[n] Mr. Ponsonby, *Ib.* p. 431.

and to appoint the Earl of Effingham, whom he disliked, to be treasurer of the household. Even the aged Lord Bateman, who was the king's personal friend, was obliged to resign his office of master of the buckhounds.[o] Similar difficulties, in regard to appointments in the household, attended the formation of the Portland ministry in the following year.[p]

In 1812, when negotiations were set on foot for the reconstruction of the ministry, after the assassination of Mr. Perceval, the premier, a question was raised as to whether the appointment of officers in the royal household should form part of the proposed ministerial arrangements, or should be left to the determination of the sovereign. Lords Grey and Grenville, having been invited by the Prince Regent to join the new administration, declined to do so unless the actual incumbents of these offices were first dismissed. The Prince Regent was advised by Lord Moira, who conducted the negotiations with the Whig leaders, to resist this stipulation; and, accordingly, the attempt at a reconstruction of the cabinet resulted in failure. But it has since come to light that the difficulty arose from the unskilful management of the dispute. The Prince Regent himself was quite willing to allow a change to be made in his household, and the officers of the household had all privately resolved to resign as soon as the new ministry had been completed, leaving their places at the disposal of the new cabinet. This intention had been made known to Sheridan, but, either from accident or design, he did not communicate it to his friends.[q] In the subsequent explanations in Parliament, it was admitted that an incoming administration had a right to claim the removal of the great officers of the household, although the exercise of such a right on the present occasion was, for special reasons, deemed inexpedient and impolitic.[r] The principal officers of the royal household are invariably chosen from amongst members of the two Houses of Parliament, and it is but reasonable that they should be expected to co-operate with their colleagues in the ministry. Moreover, from their habitual attendance upon the person of the sovereign, they undoubtedly possess means of influence that ought not to be at the disposal of any persons who are unfriendly to the party in power.

Removal of officers of household on change of ministry.

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[o] Fischel, Eng. Const. p. 520; as corrected by Haydn, Book of Dignities, p. 206; Downe, Corresp. George III. v. 2, p. 420.

[p] Tomline, Life of Pitt, v. 1, p. 149, *n.*; Parl. Hist. v. 23, p. 695. But during Mr. Pitt's administration, George III. (as he afterwards told Mr. Rose) 'insisted on having in his household such persons as he could, with comfort to himself, associate with occasionally.' (Rose, Corresp. v. 2, p. 158.) This is a privilege which no minister, at any time, would have thought of denying to his sovereign. And see Life of Earl of Minto, v. 3, p. 337.

[q] Campbell's Chanc. v. 7, p. 285; May, Const. Hist. v. 1, p. 105.

[r] See *ante*, p. 165.

Ladies of the bedchamber.

Upon the resignation of the Melbourne ministry in 1839, and before the difficulty arose between her Majesty and Sir Robert Peel respecting the ladies of the bedchamber, Lord Melbourne informed the Queen 'that it had been usual in later times, when an administration was changed, to change also the great officers of the household, and likewise to place at the disposal of the person entrusted with the formation of a new administration those situations in the household which were held by members of either House of Parliament.'[3] In claiming the exercise of this privilege, Sir Robert Peel, when called upon to form a ministry, assured her Majesty that he would not press the appointment of any one who was not personally acceptable to her. At the same time he respectfully urged that, in view of the throne being filled by a female sovereign, the same principle should be held to apply to the chief appointments which were held by the ladies of her Majesty's household, including the ladies of the bedchamber. This was objected to by the Queen, who declared that she must reserve to herself the whole of those appointments, and that it was her pleasure that no change should be made in the present incumbents. Afterwards, by advice of the retiring ministers, her Majesty wrote to Sir Robert Peel, stating that she could not 'consent to adopt a course which she conceived to be contrary to usage, and which was repugnant to her feelings.' But, in point of fact, nearly all the ladies of the court were related to the Whig ministers or to their political adherents, having been selected by the Melbourne Cabinet when her Majesty's household was first organised, thus identifying the entire court with the ministry of the day.[4] Under these circumstances it was impossible for Sir Robert Peel to persevere in the attempt to form a ministry. He therefore wrote to her Majesty, and stated that it was essential to the success of the commission with which he had been honoured, 'that he should have that public proof of her Majesty's entire support and confidence which would be afforded by the permission to make some changes in that part of her Majesty's household which her Majesty resolved on maintaining entirely without change.' The Melbourne ministry were then reinstated in office, and they at once recorded their opinion on the point at issue in a minute of council, as follows: 'That for the purpose of giving to the administration that character of efficiency and stability, and those marks of the constitutional support of the crown, which are required to enable it to act usefully to the public service, it is reasonable that the great offices of the court, and situations in the household held by members of Parliament, should be included in the political arrangements made on a change of the administration; but they are not of opinion that a similar principle

[3] Mir. of Parl. 1839, p. 2411. [4] May, Const. Hist. v. 1, p. 128.

should be applied or extended to the offices held by ladies in her Majesty's household.'[u]

But two years afterwards, when it became necessary for the Queen to apply again to Sir Robert Peel to undertake the formation of a government, 'no difficulties were raised on the Bedchamber question.' Through the interposition of Prince Albert, her Majesty was induced to take a more correct view of her position towards the incoming ministers upon this question than heretofore, and, by previous negotiation with Sir R. Peel, the matter was satisfactorily arranged before the change of ministry took place. Those ladies of the household only who were near relatives of the outgoing cabinet ministers retired, the others were permitted to remain.[v] 'The principle which Sir R. Peel applied to the household has since been admitted, on all sides, to be constitutional. The offices of mistress of the robes and ladies of the bedchamber, when held by ladies connected with the outgoing ministers, have been considered as included in the ministerial arrangements. But ladies of the bedchamber belonging to families whose political connection has been less pronounced, have been suffered to remain in the household, without objection, on a change of ministry.'[w] On the accession of the Derby ministry, in 1866, the ladies of the court remained unchanged, not having owed their appointments to political influence. And Lord Torrington continued in office as one of the lords in waiting, at the personal request of her Majesty.[x]

Prince's household.

After the marriage of the Queen, in 1840, the appointments to the prince's household were regulated, by desire of the prince,[y] upon the principle now established in that of the Queen's, namely that those appointments only should be permanent which were held by men entirely unconnected with politics, while those filled

[u] Mir. of Parl. 1839, pp. 2415, 2421. After his retirement from public life, Lord Melbourne is said to have regretted the stand he took upon this question. Quar. Rev. v. 145, p. 225.

[v] Torrens, Life of Melbourne, v. 2, p. 367.

[w] May, Const. Hist. v. 1, p. 131. And Martin, Life of the Prince Consort, v. 1, pp. 36, 105. The way in which the new principle was applied to the ladies of the household upon the change of ministry in 1841 is described in Stockmar's Memoirs, v. 2, p. 50. And see Amos, Fifty Years' Eng. Const. p. 234.

[x] *Guardian*, July 18, 1866, p. 761. It is usual for the sovereign's choice of persons to serve as lords of the bedchamber to be approved of by the prime minister, when the selection is made from friends of the party in power. Grey, Corresp. with William IV. v. 1, pp. 26, 32, 33, 88. Once, in 1831, the king waived his right of nomination in favour of any one whom the premier might choose. *Ib.* p. 138.

[y] Torrens, Life of Ld. Melbourne, v. 2, p. 301.

by peers or members of the House of Commons should change with the various changes of the ministry. In choosing his more intimate and confidential officers, the prince resolved that 'the selection should be made without regard to politics,' and should not be exclusively from either party; in order that he might be the better able to adhere to his prudent determination of resolutely keeping himself free from all parties.[z]

2. *As to the right of the Sovereign to employ a Private Secretary.*

Private secretary to the king.

Until the reign of George III. none of the English monarchs ever had a private secretary. It naturally formed a part of the duty of the principal secretaries of state to assist the sovereign in conducting his official correspondence; but such were the habits of industry and attention to the duties of his exalted station which characterised George III., that it was not until his sight began to fail that he would permit another person to assist him in transacting the daily business of the crown. But in 1805 his Majesty became so blind as to be unable to read the communications of his ministers. Averse to remain in London, where his infirmity would be more exposed to public observation, the king resolved to reside at Windsor. This rendered the appointment of a private secretary absolutely necessary. Accordingly, on the recommendation of Mr. Pitt, Colonel Herbert Taylor was appointed to the office, with a salary of 2,000*l.* per annum, which was paid out of funds at the disposal of the crown, and never came under review in Parliament. Colonel Taylor discharged the duties of this delicate and confidential office, until the commencement of the

Colonel Herbert Taylor.

Martin's Pr. Consort, v. 1, p. 54. Grey, Early Years of Pr. Consort, pp. 266, 321, 323. See Stockmar's Mem. v. 2, p. 23. And see the Duke of Wellington's views on this question, and in regard to the practice respecting officers of either the king or queen's household in relation to the ministry. Welln. Desp. 3rd S. v. 8, pp. 393–402, 460.

Regency, with such integrity, prudence, and reserve, as to shield himself from every shadow of complaint. Nevertheless, the appointment itself was viewed with disfavour by many leading men in Parliament, who only refrained from calling it in question from motives of delicacy towards the afflicted monarch, whose loss of sight was attributable to his unceasing devotion to his public duties.[a] When the Prince Regent was called to the throne (in December 1810), he appointed his friend Colonel M'Mahon, who was at the time a member of the House of Commons, to be his private secretary and keeper of the privy purse, with the same salary as his predecessor, but with the important difference that it was to be paid by the Treasury, thereby rendering Colonel M'Mahon a public officer. This transaction gave rise to an animated discussion in the House of Commons. After the 'Official Gazette' had appeared, announcing the appointment, enquiries were made of ministers, on March 23, 1812, as to the facts of the case; and on April 14, Mr. C. W. Wynn moved for a copy of the appointment, for the purpose of founding upon it a resolution of censure, or a declaration of the inutility of the office. Mr. Wynn urged that the appointment was wholly unprecedented, except in the case of Colonel Taylor, which was purely a private affair, arising out of the king's infirmity; and that 'it was a most unconstitutional proceeding to allow the secrets of the council to pass through a third person,' thereby subjecting the advice of cabinet ministers to their sovereign 'to the revision of his private secretary.' Ministers opposed the motion, contending that the Prince Regent, who had not been trained to habits of business like his father, stood in need of the services of a private secretary to assist him in his private correspondence, and to relieve the heavy manual labour

Colonel M'Mahon.

[a] Parl. D. v. 22, pp. 121, 342, 361. Jesse, Life of George III. v. 3, p. 439.

which the immense amount of public business requiring the attention of the crown unavoidably entailed. This office, moreover, was not one of responsibility and would not encroach upon the province or responsibility of any minister. Ministers of the crown would still be the legal and constitutional organs through which all the public business must be transacted. On a division Mr. Wynn's motion was negatived, by a majority of 76. The Opposition, however, determined to renew the attack, on the special ground that the appointment, unlike that of Colonel Taylor, had been made a public one. But on June 15, Lord Castlereagh informed the House that the Prince Regent had been pleased to direct that Colonel M'Mahon's salary should be paid out of his privy purse. The Opposition then agreed to let the matter drop; and Colonel M'Mahon continued to hold the office until his death, in 1817,[b] when Sir B. Bloomfield was appointed private secretary. He was replaced, in 1822, by Sir Wm. Knighton, who retained the office until the king's death, in 1830.

Office of king's secretary.

Colonel M'Mahon was made a privy councillor in 1812, and Sir B. Bloomfield in 1817.[c] But this was afterwards admitted to have been a mistake, 'for in fact it gave authority and consequence where confidence to any degree may be placed, but where authority and consequence ought not to exist.' Accordingly, in 1823, when George IV. wished to admit Sir W. Knighton into the privy council, it was opposed by Lord Liverpool (the premier), as being 'most objectionable in principle and precedent.' His lordship cited the opinion of George III., 'who understood these matters better than any one,' that the king's private secretary 'should be put upon exactly the footing of an under-secretary of state'—a functionary who is 'never a privy councillor, although necessarily he knows more of the secrets of government than any cabinet minister, except his principal and the first minister. These arguments prevailed and the matter was allowed to drop.[d]

Sir Herbert Taylor, the faithful secretary of George

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[b] Parl. D. v. 23, p. 476; Ann. Reg. 1817, p. 147. Sir B. C. Brodie's Works, v. 1, p. 77. Ed. Rev. v. 136, p. 395.

[c] Haydn, Book of Dignities, pp. 140, 141.

[d] Welln. Desp. 3rd S. v. 2, pp. 103-105. And see the Duke of Wellington's advice to Sir W. Knighton, in Greville Mem. v. 1, p. 73.

III., was reappointed to this office by William IV., in succession to Sir W. Knighton. We have the testimony of Lord Aberdeen, when prime minister, that no objection was made to these appointments, notwithstanding that 'these men must of necessity have known and were able to have given advice, or to have disclosed everything, if they had thought fit, although neither of them was a privy councillor.'[e] It is true that on one occasion, as we have seen, William IV. made his private secretary the medium of giving expression to his wishes to certain peers, in regard to their conduct upon a great public question, in a very irregular manner;[f] but this communication was made with the knowledge and consent of the prime minister.[g]

Sir Herbert Taylor.

Upon the accession of Queen Victoria (on June 20, 1837) it was determined that no private secretary should be assigned to her, lest the influence of such an officer over a youthful and inexperienced sovereign should prove prejudicial to the State. But Lord Melbourne, who was then first minister of the crown, undertook to act also as her Majesty's private secretary. This was avowedly a mere temporary arrangement, entered into in the hope—which, happily, was speedily realised—that her Majesty would very soon contract a marriage, which would enable the duties of private secretary to be appropriately transferred to her husband. Meanwhile his lordship was assisted in the discharge of this self-imposed duty by Baron Stockmar, who acted (informally) as her Majesty's private secretary for about fifteen months after her accession. For upwards of twenty years after this event the baron proved himself a devoted friend and wise counsellor to the Queen and her royal consort.[h] The assumption by the prime

Her Majesty's private secretary.

[e] Hans. D. v. 130, p. 96. And see Nicholas, Pref. to Pro. Privy Coun. v. 6, p. 134, *n.*

[f] See *ante*, p. 286.

[g] See Earl Grey, Corresp. with William IV. v. 2, pp. 439-452.

[h] Stockmar's Mem. v. 1, pp. lxvi. 383-388. And see Martin's Pr. Consort, *passim.* Torrens, Life of Melbourne, v. 2, p. 236. The baron,

minister of such a position towards the Queen, under any circumstances, was however characterised most truly by Lord Aberdeen as an 'unconstitutional' proceeding;[i] being calculated to impair the free exercise of the royal judgment, under the plausible pretext of assisting the sovereign in the performance of her onerous functions. But we are safe in concluding that no such intention influenced Lord Melbourne upon this occasion, and that his sole desire was to afford to his royal mistress, in her youth and inexperience, the benefit of his matured acquaintance with the routine of government. After her Majesty's marriage with Prince Albert, his Royal Highness, with the sanction of the ministers of the crown, assumed the duties of the Queen's private secretary; although in consideration of his rank and station he had been made a privy councillor. He was peculiarly fitted for this office, not merely by his admirable personal qualities and high attainments, but from his position as husband and *alter ego* of the Queen.[j] He acquitted himself of the duties which thus devolved upon him to the admiration of all parties, as well as to the inestimable benefit of his sovereign and the country. Subsequent to the great loss which her Majesty sustained in the premature decease of her lamented consort, several gentlemen in succession were appointed as her private secretary.[k] Of late years no constitutional

Prince Albert as the Queen's private secretary.

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however, was largely imbued with reactionary ideas, which found expression in an elaborate dissertation on the functions of the sovereign in a constitutional government (see Martin's Pr. Consort, v. 2, pp. 545–557). This essay, though of considerable merit, is unsafe and unsound as an exposition of modern constitutional doctrine. See Fd. Rev. v. 148, pp. 283–288. See also Amos, Fifty Years of the Eng. Const. pp. 318–326. Amos, however, presses his views on the question too far. The true constitutional doctrine of the relation of the sovereign to the ministers of the crown is that expressed by Mr. Gladstone, in his Gleanings, v. 1, pp. 203–248. And see Todd, Parl. Govt. in the Colonies, c. i.

[i] Hans. D. v. 130, p. 96.

[j] Martin's Pr. Consort, v. 1, p. 71; and v. 2, c. 1. Hans. D. v. 130, pp. 97, 105.

[k] Viz., Sir T. M. Biddulph and Lt.-Gen. the Hon. Charles Grey. Upon the death of Gen. Grey, in April 1870, Col. Ponsonby was gazetted to this office.

objection has been urged to the continuance of this office; and it is clear that the great and increasing amount of routine duty devolving upon an English sovereign at the present day, as well as a consideration of the altered position of the crown towards the members of the administration since the establishment of parliamentary government, alike justify and require the appointment.

Right of the sovereign to employ a private secretary.

3. *The Constitutional Position of a Prince Consort.*

Prince Consort.

The position of a queen consort has been ascertained by the laws and customs of the realm. She has her own privileges and rights. She has important duties to perform as head of the court, in maintaining its dignity and respectability; and by her example and authority she is enabled to exercise a direct influence over the manners of society, and especially of the female portion of it. But the constitution has assigned no definite place to the husband of a reigning queen. The only precedent in modern English history, until the accession of Queen Victoria, of this peculiar and difficult position is that of Prince George of Denmark, the husband of Queen Anne; but this prince was destitute of the ability and strength of character which should have made him an active and efficient helpmate to his wife and sovereign.[1] It was reserved for Prince Albert, by the rare combination of admirable qualities with which he was endowed, to create for himself a position of preeminent usefulness, without trenching in the slightest degree upon the limits within which, as the husband of his sovereign, he was necessarily confined. Called to his exalted station at a very early age, he diligently applied himself to the study of our laws and institutions, in order that he might be qualified to afford to the crown efficient aid and counsel in the discharge of its

Character and conduct of Prince Albert.

[1] Ed Rev. v. 115, p. 211.

Prince Consort.

onerous functions. His marriage to Queen Victoria took place on February 10, 1840. On March 5, the Queen conferred upon Prince Albert place and precedence next to herself, and on September 11 following, seven months after his marriage, and a few days after the completion of his twenty-first year, he was introduced, by her Majesty's command, to the Privy Council, and took his seat at the board, which he never afterwards failed to attend.

In January 1840, a Bill was introduced into the House of Lords for the naturalisation of Prince Albert, which rapidly became law. This Bill originally contained a clause to give the prince rank next after the Queen 'in Parliament or elsewhere.' But being objected to by the Duke of Wellington, who then led the Opposition in the House of Lords, the clause was withdrawn; and the opportunity was lost of regulating the precise rank and position of a prince consort by Act of Parliament.[m] It was afterwards determined, with the concurrence of the leaders of both parties, to give the prince precedence next to the Queen by the exercise of the royal prerogative; a settlement of the question which was less satisfactory and conclusive than if it had been definitively fixed by statute.[n]

His royal highness was not a member of the House of Peers, and had therefore no place formally assigned to him for the public expression of his personal opinions upon political questions. In this respect his position was analogous to that of the Queen herself. As the consort of his sovereign, he was in fact her *alter ego*; and it was in this capacity, not merely from his being a member of the Privy Council, that he was constitutionally empowered to attend at every conference between the Queen and her ministers.[o] Generally present at such times, he always took part in the discussions with tact, ability, and discretion. It was not until July 2, 1857, that the title and dignity of prince consort were granted to him by royal letters patent.[p]

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[m] Grey, Early Years of Pr. Consort, pp. 263, 286. Torrens, Life of Ld. Melbourne, v. 2, p. 321.

[n] *Ib.* pp. 325–327. And see Martin's Pr. Consort, v. 1, pp. 61, 93.

[o] Ld. Chief Justice Campbell, in Hans. D. v. 130, p. 105. Stockmar's Mem. v. 2, pp. 492–498.

[p] So early as 1841, the Queen expressed her desire that the title of

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As we have already seen, the prince, with the express sanction of the ministers of the crown, assumed the duties of the Queen's private secretary, and in that capacity was permitted to peruse all public despatches that were laid before the Queen, and all the confidential communications of ministers.[q] His memoranda upon such occasions were sent to the prime minister, and contributed very materially to shape the policy of government. Upon his retirement from office in 1841, Lord Melbourne took occasion to congratulate her Majesty upon 'the inestimable advantage she possessed in being able to avail herself of the advice and assistance of her royal consort,' and asserted his conviction that she could not do better 'than to have recourse to him when it was needed, and to rely upon him with confidence.'[r] Subsequently, Sir R. Peel and Lord Aberdeen endorsed these assurances, and declared that the prince, by his official relations to the Queen, was enabled to assume the place and influence to which he was properly entitled.[s]

His place and duty.

In a work which was published, after his decease, by express permission of the Queen, we have Prince Albert's own definition of his place and duties. . He says the position of 'the consort and confidential adviser and assistant of a female sovereign' 'is a most peculiar and delicate one. Whilst a female sovereign has a great many disadvantages in comparison with a king, yet if she is married, and her husband understands and does his duty, her position, on the other hand, has many compensating advantages, and, in the long run, will be found even to be stronger than that of a male sovereign. But this requires that the husband should entirely sink his *own individual* existence in that of his wife; that he

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king consort should be conferred upon the prince, but after consulting her ministers this idea was abandoned. Martin's Pr. Consort, v. 1, p. 257.

[q] *Ib.* p. 95.

[r] *Ib.* p. 117.

[s] *Ib.* p. 119.

Prince Consort.

should aim at no power by himself or for himself; should shun all ostentation, assume no separate responsibility before the public, but make his position entirely a part of hers; fill up every gap which, as a woman, she would naturally leave in the exercise of her regal functions; continually and anxiously watch every part of the public business, in order to be able to advise and assist her at any moment, in any of the multifarious and difficult questions or duties brought before her—sometimes international, sometimes political, or social, or personal. As the natural head of her family, superintendent of her household, manager of her private affairs, sole *confidential* adviser in politics, and only assistant in her communications with the officers of the government, he is, besides the husband of the queen, the tutor of the royal children, the private secretary of the sovereign, and her permanent minister.'[t]

How thoroughly, and with what strict impartiality, Prince Albert fulfilled the multifarious duties of his difficult and delicate position, which he has thus graphically described, is well known to the world, as well as to the British nation, who have never ceased to mourn his loss.

Defence of his conduct.

Prince Albert's position as *alter ego* of the Queen was fully approved and sanctioned by all the leading statesmen of England, when called in question during a temporary outburst of unpopularity by which he suffered at the commencement of the Russian war. At the opening of the session of 1854, the principal members of government and of the Opposition, in both Houses of Parliament, gave expression to their sentiments on this subject, during the debate upon the address in answer to the speech from the throne. A portion of the press had attacked the prince for alleged unconstitutional 'inter-

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[t] Prince Albert's Speeches, &c. pp. 74, 76. See Mr. Gladstone's observations on this definition, Cont. Rev. v. 26, p. 9.

ference' in politics, and in the affairs of the army,[u] asserting that he had used his position to control the action of the government, and to advance the interests of foreign dynasties to the prejudice of England. The prime minister, Lord Aberdeen, defended his Royal Highness from these unjust aspersions upon his character. He stated that Prince Albert had, with great self-denial and discretion, declined to accept the office of commander-in-chief of the British army, notwithstanding the urgent solicitations of the Duke of Wellington that he would consent to succeed him in that post[v]; and that his alleged 'interference with the business of the army' had been no more than his position as a field-marshal and colonel-commanding certain regiments, and one acting on behalf of a female sovereign, amply justified. The commander-in-chief, Lord Hardinge, corroborated this statement. At the same time, the premier took the opportunity to define, for the information of parliament and of the country, the constitutional position occupied by the Prince Consort, in relation to the executive government; and to bear testimony to the wisdom and prudence which he had uniformly exhibited in maintaining the same. Lord Derby and Lord Campbell (Chief Justice of the Common Pleas) in the House of Peers, and Lord John Russell and Mr. Walpole in the House of Commons, expressed their entire satisfaction with this explanation, and their cordial approval of the conduct of Prince Albert in his position of confidential adviser of the Queen.[w]

Since his decease (which occurred on December 14, 1861), ample evidence has been adduced as to the

[u] Martin's Pr. Consort, v. 2, p. 538, *et seq.* Stockmar's Mem. v. 2, pp. 480–505.

[v] For further particulars in regard to this offer see *post*, v. 2.

[w] Hans. D. in both Houses, for January 31, 1854. And see the eulogiums pronounced upon the Prince Consort, in both Houses of Parliament, on February 6, 1862, after his decease, and especially the speeches of Earl Russell and of Mr. Disraeli.

Prince Consort.

manner in which Prince Albert discharged the difficult task he had undertaken, during the whole course of his brief but well-spent life. 'All agree in testifying that the prince's conduct was invariably characterised by a consummate judgment, and by a constant deference to the constitutional rights of the ministers of the crown. With strong political convictions, and a decided opinion on the political questions of the day, which he expressed and defended with great ability, his course was uniformly free from all party bias, straightforward, and patriotic. His influence in public affairs was at once so genial and so salutary, that, like the pressure of the atmosphere, it was unfelt. He hit the exact mean on which authority rests in a free country, and he contributed to make the crown act as the adjusting balance of our institutions at home, and of our policy abroad.' He brought to the consideration of every question of foreign policy, and of every point of domestic administration, 'the principles of a statesman, rather than the interests of a politician; and as his position had placed him beyond the region in which men contend for political power, he sought, without distinction of parties or persons, to apply his dignified, liberal, and honest rule of life to the smallest as well as the greatest objects to which he turned his clear and comprehensive mind.'[x]

His services to the community.

With an intuitive perception of the widely-extended field—hitherto untrodden by royal footsteps—wherein his varied accomplishments, and the influences of his exalted station, could be suitably employed, Prince Albert took a prominent part in the encouragement of every social movement which sought to advance the industrial, educational, or moral interests of the people. He lent his aid and countenance to the promotion of science and the arts, and was always ready to foster

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[x] Rt. Hon. W. N. Massey, in Ed. Rev. v. 115, p. 211. And see Martin's Life of the Prince, *passim*. Also an article on the prince (attributed to Mr. Gladstone) in the Cont. Rev. v. 26, p. 1.

every undertaking that gave promise of contributing to develope the resources of the empire, or of assisting her friendly and successful rivalry with other countries in the arts of peace.[y]

The value of his life to the cause of monarchy.

The loss which the nation sustained in the death of this illustrious man has, unhappily, deprived our enquiry into the constitutional standing of a prince-consort of its immediate practical value; nevertheless, the example of his life is of incalculable service to the cause of monarchy, as it helps us to explain and illustrate the *status* of the sovereign in the existing development of the British constitution, and also to exemplify the value and extent of the influence which may be legitimately exercised by one who is politically identified with the occupant of the throne, and who yet fills a personally irresponsible position,[z] without encroaching upon the province of responsible government.

Constitutional position of the sovereign.

We now proceed to define, more particularly, the constitutional position of the British sovereign. We have already seen that, in a system of parliamentary government, as it is administered in England, the personal will of the monarch can only find public expression through official channels, or in the performance of acts of state which have been advised or approved by responsible ministers; and that the responsible servants of the crown are entitled to advise the sovereign in every instance wherein the royal authority is to be exercised.[a] In other words, the public authority of the crown in England is exercised only in acts of repre-

[y] Martin, Pr. Consort, v. 1, pp. 332, 385, 485. He acted as Chairman of the Royal Commission for the Encouragement of the Fine Arts in the United Kingdom, from its appointment in 1841 until his death. (Com. Papers, 1863, v. 16, p. 323; Martin's Pr. Consort, v. 1, p. 119). He was also President of the Royal Commission for the International Exhibition of 1851; and to him is due the chief merit of the conception and carrying out of that great work, the forerunner of so many similar undertakings, but pre-eminent amongst them all for its design and execution. See E. A. Bowring's paper in 19th Cent. v. 2, p. 62.

[z] Earl Derby and Mr. Disraeli in Hans. D. v. 165, pp. 27, 69.

[a] See *ante*, p. 267.

sentation, or through the medium of ministers, who are responsible to parliament for every public act of their sovereign, as well as for the general policy of the government which they have been called upon to administer. This has been termed the theory of Royal Impersonality. But the impersonality of the crown only extends to direct acts of government. The sovereign retains full discretionary powers for deliberating and determining upon every recommendation which is tendered for the royal sanction by the ministers of the crown; and, as every important act of administration must be submitted for the approval of the crown, the sovereign, in criticising, confirming, or disallowing the same, is enabled to exercise a beneficial influence and an active control over the government of the country. In the gradual but almost entire transformation which the kingly office has undergone, since the substitution of parliamentary for personal government, the functions of royalty are still vital if less conspicuous than before. They are now chiefly fulfilled in the exercise of a direct and personal influence in the whole work of government.[b]

In the fulfilment of the functions of royalty, much must always depend upon the capacity and personal character of the reigning monarch. The sovereign 'should be, if possible, the best informed person in the empire, as to the progress of political events and the current of political opinion both at home and abroad.' 'Ministries change, and when they go out of office lose the means of access to the best information which they had formerly at command. The sovereign remains, and to him this information is always open. The most patriotic minister has to think of his party. His judgment, therefore, is often insensibly warped by party considerations. Not so the constitutional sovereign, who is

[b] See Mr. Gladstone, in Cont. Rev. v. 26, pp. 10-15.

exposed to no such disturbing agency. As the permanent head of the nation he has only to consider what is best for its welfare and its honour; and his accumulated knowledge and experience, and his calm and practised judgment, are always available in council to the ministry for the time, without distinction of party.'[c]

Duty of a sovereign.

But in order to discharge his functions aright, it is indispensable that the sovereign should be ready and willing to labour, zealously and unremittingly, in his high vocation; otherwise he will be unable to cope with the multifarious and perplexing details of government, or to exercise that controlling power over state affairs which properly appertains to the crown. On the other hand, a sovereign who, from whatever cause, is indifferent to the exercise of his kingly functions, may neglect the administrative part of his duties, and, if he be served by competent ministers, the commonwealth will suffer no immediate damage. But, in such a case, the legitimate influence of the monarchical element in the constitution is impaired, and is rendered liable to permanent deprivation.[d] Moreover, while a sovereign may forego the active control of the affairs of state without apparent public loss, provided his ministers are able and patriotic, the moment political power falls into the hands of self-seeking and unscrupulous men, the nation is deprived of the check which a vigilant and upright monarch alone can maintain—a check no less valuable because unseen, but which may suffice, upon an emergency, to save the country from misgovernment. For the sovereign can always dismiss a ministry, and summon another to his councils, provided

[c] Prince Albert's words, quoted in Martin's Pr. Consort, v. 2, p. 159; and see *Ib.* p. 300. Mr. Disraeli's speech at Manchester, April 3, 1872. And in respect to George III. see *ante*, p. 283. See also articles in the Sat. Rev. Nov. 8, 1862, June 4, 1864; Martin's Pr. Consort, v. 1, pp. 313–316 See also, on the advantages derivable from the experience of a sagacious king, Bagehot, on the Eng. Const. pp. 103–109. Prince Albert, as *alter ego* of the Queen, realised, in a pre-eminent degree, his own ideal of the kingly office.

[d] See Bagehot, pp. 112–116.

Constitutional position of the sovereign.

he does so not for mere personal considerations, but for reasons of state policy, which the incoming administration can explain and justify to the satisfaction of Parliament. This branch of the royal prerogative will presently engage our special attention.

It need scarcely be urged that the possession of a high personal character and a cultivated intellect are of vital consequence to the sovereign, to fit him for his rightful position in the inner councils of the state. Therein, the king must be regarded as, in fact, the permanent president of his ministerial council, with liberty to share in the initiation as well as in the maturing of public measures; provided only that he does not limit the right of his ministers to deliberate in private before submitting for his approval their conclusions in council; whilst they, on the other hand, are equally careful to afford to their sovereign an opportunity of exercising an independent judgment upon whatever advice they may tender for his acceptance. For it is the duty of the sovereign to subject every recommendation of his ministers to the scrutiny of an intelligent and impartial mind, intent only upon the promotion of the public good.[f] Should such a necessity unfortunately arise, a prudent and sagacious monarch—while unable to impose his personal views upon his ministers, or to shape a policy for their guidance—can do much to moderate party asperities, rebuke selfish and unworthy aims, and encourage patriotism, by bringing to bear upon his ministers a healthy moral influence, similar to that which proceeds from an enlightened public opinion.

On the wider field of national and non-political pursuits, wherein the individuality of the sovereign is equally excluded from direct interference, the moral influence of the crown, as a means of promoting the public welfare, is of incalculable weight and value. It

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[f] See *post*, v. 2.

properly devolves upon the constitutional sovereigns of England to employ this powerful influence for the encouragement of public and private morality, for the advancement of learning, and for the diffusion of civilisation among their people.[g] The favour of the monarch is always an object of honourable ambition, and, when worthily bestowed, will nerve the arm and excite the brain to deeds which deserve a nation's gratitude, and bring renown upon the whole empire.

Importance of the kingly office.

With such advantages resulting from monarchical rule, it were vain to imagine that, because the direct interference of the crown in acts of government is forbidden by the spirit of the constitution, therefore royalty has ceased to be anything but an empty phantom or a costly pageant. Though divested, by the growth and development of our political institutions, of direct political power, the crown still retains immense personal and social influence for good or evil. 'The king's name is a tower of strength;' and without the blessing of headship, in the person of an hereditary sovereign, the time-honoured institutions of England would sink at once to the level of a democracy, and the good government of the country would be jeopardised, if not overthrown, by the strife and cupidity of rival factions contending for the mastery.[h]

Ceremonial and personal functions.

One of the most important branches of the regal functions is that wherein the crown, as 'the symbol of national sovereignty,' appears in public for the perform-

[g] See Harris on Civilisation, pp. 291–294. Thus, upon the occurrence of a frightful catastrophe to a female performer on the tight-rope, at Aston Park, near Birmingham, Sir C. B. Phipps, by command of the Queen, wrote to the Mayor of Birmingham, on July 25, 1863, to express her Majesty's desire that he would use his influence to prevent in future such demoralising exhibitions in a place intended for the healthy exercise and rational recreation of the people. See the letter with the Mayor's reply in the Ann. Reg. 1863, Chron. p. 122. This 'personal and direct rebuke' by her Majesty led, we are told, to 'the instant destruction of Blondinism' in Great Britain. Vict. Mag. v. 29, p. 220. And see Louis Blanc's Letters on England, 2nd S. v. 1, p. 271; and Hans. D. v. 211, p. 1733.

[h] See Cox, Eng. Govt. p. 634.

ance of those acts of state which peculiarly appertain to the kingly office—such as opening and proroguing Parliament, holding public receptions, or ceremonials for conferring marks of distinction and royal favour upon particular persons, and according, on behalf of the nation, a hospitable welcome to foreign sovereigns, or other eminent persons from abroad, who may visit the kingdom. These duties, while they frequently entail heavy burdens upon the sovereign, cannot be intermitted—except for unavoidable causes, and for a limited time—without impairing the dignity and influence of the crown itself. The presence of the sovereign in the midst of his people, dispensing favours, or engaged in the performance of high acts of state, affords opportunity for the public expression of the loyalty or personal devotion of the people to their king. This elevated Christian sentiment is of the greatest value in uniting together the ruler and the subject, so that fidelity and attachment to the monarchy become a part of the national life.[1] But 'loyalty needs to be stimulated by external display, by the pomp and circumstance of power, by all the kindly feelings which personal intercourse creates between sovereign and subject. If a sovereign omits to keep it alive by such means, he leaves unfulfilled that one function which no one else can perform in his stead.'[j]

Moreover, notwithstanding the supreme political power which is concentred in the hands of the prime minister for the time being, the court, presided over by the sovereign, is still the highest point in the social scale. No prime minister, or leader of a political party, can attempt to vie with his sovereign in this particular. The personal pre-eminence of the king invests himself and his surroundings with a dignity which is absolute

Social pre-eminence.

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[1] On this point see Austin, Plea for the Const. p 37.

[j] Sat. Rev. March 26, 1864.

and unapproachable. The most exalted position in English society is thereby withdrawn from the arena of political competition, which is an immense benefit to the best interests of the nation. Were it otherwise, 'politics would offer a prize too dazzling for mankind.' If, in addition to the advantages that at present attend upon a successful parliamentary career, 'the highest social rank was to be scrambled for in the House of Commons, the number of social adventurers there would be incalculably more numerous, and indefinitely more eager;' and an overwhelming preponderance would be given to a force which is 'already perilously great.'[k] From all these disturbing influences, our political system has been preserved by the position assigned therein to the monarch. The court of our sovereign is therefore an important element in the forces whereby the legitimate influences of royalty make themselves felt in the body politic; and if the favour and hospitalities of the court are beneficially dispensed—and its recreations becomingly directed into moral and healthful channels—the social and moral tone of the upper classes, and by their example, of the whole community, are proportionably elevated.[l]

The foregoing definition of the true place and work of the sovereign in the British Constitution, as now administered, may be suitably illustrated by reference to the recorded opinions of eminent statesmen of our own day upon this topic:—

Lord Brougham on the kingly office.

Lord Brougham, in his 'Historical Sketches,' has the following weighty remarks: 'The question is, Does the king of this country hold a real or only a nominal office? Is he merely a form, or is he a substantive power in our mixed and balanced constitution? Some maintain—nay, it is a prevailing opinion among certain authorities of no mean rank—that the sovereign, having chosen his ministers, assigns over to them the whole executive power. They treat him as

[k] Bagehot, Eng. Const. p. 73.

[l] See Mr. Gladstone on this subject in Cont. Rev. v. 26, p. 13, and in the Church Quar. Rev. v. 3, p. 487. And see a well-written 'Letter to the Queen, on her Retirement from Public Life: by one of her Majesty's most Loyal Subjects' (London, 1875).

a kind of trustee for a temporary use, to preserve, as it were, some contingent estate; or a provisional assignee, to hold the property of an insolvent for a day, and then divest himself of the estate by assigning it over. They regard the only power really vested in the crown to be the choice of ministers, and even the exercise of this to be controlled by Parliament. They reduce the king more completely to the condition of a state pageant, or state cypher, than one of Abbé Sieyès' constitutions did, when he proposed to have a grand functionary with no power except to give away offices; upon which Napoleon, then First Consul, to whom the proposition was tendered, asked if it well became him to be made a 'Cochon à l'engrais à la somme de trois millions par an?'[m] The English animal, according to the Whig doctrine, much more nearly answers this somewhat coarse description; for the Abbé's plan was to give his royal beast a substantial voice in the distribution of all patronage, while our lion is only to have the sad prerogative of naming whomsoever the Parliament chooses, and eating his own mess in quiet.

'Now, with all the disposition in the world to desire that the royal prerogative should be restricted, and the will of the nation govern the national affairs, we cannot comprehend this theory of a monarchy. It assigns to the crown either far too much revenue, or far too little power. To pay a million a year, or more, for a name seems absurdly extravagant. To affect living under a kingly government, and yet suffer no kind of kingly power, seems extravagantly absurd. Surely the meaning of having a sovereign is, that his voice should be heard, and his influence felt, in the administration of public affairs. The different orders of the state have a right to look towards that high quarter all in their turn for support, when their rights are invaded by one another's encroachments, or to claim the royal umpirage when their mutual conflicts cannot be settled by mutual concessions; and unless the whole notion of a mixed monarchy, and a balance of three powers, is a mere fiction and a dream, the royal portion of the composition must be allowed to have some power to produce the effect upon the quality of the whole. It is not denied that George III. sought to rule too much—it is not maintained that he had a right to be perpetually sacrificing all other considerations to the preservation or extension of his prerogative: but that he only discharged the duty of his station by thinking for himself, acting according to his conscientious opinions, and using his influence for giving these opinions effect, cannot be denied.' . . . 'George III. set one example which is worthy of imitation in all times. He refused to be made a state puppet in his minister's hands, and to let his name be used either by men whom he despised, or for purposes which he disapproved. Nor could any one ever accuse him of ruling by

[m] A hog to be fatted at the rate of 120,000*l.* a year.

favourites; still less could any one, by pretending to be the people's choice, impose himself on his vigorous understanding.'[n]

Again, in his 'Political Philosophy,' Lord Brougham interprets the British Constitution as intending that the opinions of the monarch should have a sensible weight, even against the most conflicting sentiments of the people and of the peers, and that the individual monarch should be a substantive part of the political system, as a check on the other branches.[o]

Earl Grey on the kingly office.

In his Essay on Parliamentary Government,[p] Lord Grey thus expresses himself:—'There is a further safeguard against abuse, in its being requisite that the ministers of the crown should obtain its direct sanction for all their most important measures. The crown, it is true, seldom refuses to act upon the advice deliberately pressed upon it by its servants, nor could it do so frequently without creating great inconvenience. But the sovereigns of this country nevertheless may, and generally have exercised much influence over the conduct of the government; and in extreme cases the power of the crown to refuse its consent to what is proposed by its servants may be used with the greatest benefit to the nation. A refusal on the part of the sovereign to sanction measures which the ministers persist in recommending as indispensable, is indeed a legitimate ground for their resignation: and if the question which leads to this is one on which they have the support of public opinion, they must in the end prevail. But if this high power is exercised with wisdom, and is reserved for great emergencies, the crown may generally calculate on the support of the nation in refusing to sanction measures improperly pressed upon it by its ministers, especially where the measures so urged involve an abuse of the royal authority for their own party objects.'

Earl Derby on the influence of the sovereign.

The late Earl of Derby, speaking in Parliament on this subject, has said:—'The people of this country are under a great mistake if they suppose that the sovereign does not exercise a real, salutary, and decided influence over the councils and government of the country. The sovereign is not the mere automaton, or puppet, of the government of the day. She exercises a beneficial influence and control over the affairs of the state; and it is the duty of the minister for the time being, in submitting any proposition for the assent of her Majesty, to give satisfactory reasons that such propo-

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[n] Historical Sketches of Statesmen, in the Time of George III. 1st S. ed. 1839, pp. 12–14. But when Lord Brougham was a cabinet minister, in the reign of William IV., his treatment of the king was hardly in accordance with this deliberately expressed opinion of the political rights of the sovereign. See the Duke of Somerset on Monarchy and Democracy, p. 8.

[o] V. 3, p. 302. But see Mr. Senior's comments upon this passage, in his Historical Essays, v. 1, p. 347.

[p] New ed. pp. 5, 6.

sitions are called for by public policy, and justified by the public interests. If the sovereign is not satisfied with the advice tendered to her,—if, either from the suggestions of her own mind, or from objections which may be suggested to her [by the Prince Consort]—her Majesty is of opinion that she will not accept the advice of the responsible minister of the crown, the course of the crown and the minister is equally open. The course of the crown is to refuse to accept that advice of the minister, and the inevitable consequence to the minister would be the tender of his resignation.'[q]

The influence which properly appertains to the opinions of the sovereign, when constitutionally expressed, would naturally be exerted in such an emergency to place the government of the country in the hands of a minister whose policy was in accordance with the views entertained by the crown itself; but unless those views found a response from the nation at large, and were accepted by Parliament, they could not ultimately prevail. For 'the greater part of the power still practically retained by the crown depends upon the influence it can exercise on individual statesmen, and through them on the dominant party of the day.'[r] In the last resort, no opinions or policy can be carried out by the government of England but such as meet with the sober approval of Parliament and of the people.[s]

Definition of prerogative.

The term 'prerogative' in its primary sense is used to express the freedom of independent action which belongs to the sovereign.[t] This freedom of action, in the limited monarchy of England, is, as we have already pointed out, so restricted and controlled by constitutional maxims, which have practically the force of law, that it is powerless for evil, however potent and beneficial may be its occasional exercise, to correct or abate the injurious consequences of ministerial action or advice. For while the sovereign is free to accept or reject

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[q] Hans. D. v. 130, p. 103. And see Mr. Disraeli's observations, *Ib.* v. 188, p. 1113; v. 191, p. 1705. Earl Granville, *Ib.* v. 193, p. 206.

[r] Quar. Rev. v. 123, p. 544.

[s] See further, on this point, *post*, v. 2.

[t] See Amos, Fifty Years of the Eng. Const. p. 266.

the advice of his ministers, upon any matter, by reason of the prerogative of the crown, the action of the sovereign, under such circumstances, must be sustained by ministers, or it will fail to secure the approval of Parliament, or the consent of the nation.[u]

Influence of the sovereign in political affairs.

The power of the sovereign in England, as has been well remarked by a recent political writer, is considerably increased when rival political parties are evenly balanced; and 'it rises still higher when the competition between the various statesmen of all parties becomes close. For, though the rise and fall of parties is decided in the main by the constituencies, their power extends only in very rare cases to the careers of individual politicians. Unless a man be singularly eminent, the sovereign can place a ban upon him, and exclude him, if not from all office, at least from the highest office, without any great risk of a collision with the House of Commons or the people. Court favour, therefore, is no matter of tinsel, but an object of substantial importance to politicians; and the fear of losing it avails, to a certain extent, to mould their policy, whether they are in office or in opposition. If this species of influence were merely used to give a due weight to the personal opinions of the sovereign, there would be no reason to complain, and its exercise would be acquiesced in cheerfully.' In past times there have been 'obscure favourites concealed under the shadow of the throne,' whose conduct gave rise to complaints of unauthorised advice and backstairs influence; but 'in our day the sense of honour has become keener, and political combatants no longer consider stratagems of this kind legitimate.'[v]

Let us now consider the prerogative of the crown in the appointment of ministers of state, to whom the government of the country is to be entrusted.

[u] See Amos, Fifty Years of the Eng Const p. 307.

[v] Sat. Rev. Aug. 1, 1863, p. 142.

Appointment of ministers by the crown;

From the high and commanding position occupied by the sovereign, it would be natural to infer that he should be free to secure the services of the wisest and ablest men for this purpose. Accordingly the British Constitution distinctly recognises the right of the sovereign to make choice of all his responsible ministers,[w] and the continuance of the royal confidence in an existing ministry is an essential prerequisite to its remaining in office.

their choice and dismissal.

Commenting upon the exercise of this branch of the royal prerogative, Lord Brougham asserts that it is the 'unquestioned power of the crown to choose and to change its servants;' and that 'no one would think of questioning the foundation of this power, of objecting to its existence, or of wishing to restrict it,' provided only that it is exercised 'on grounds capable of being stated and defended.' The grounds upon which the sovereign may constitutionally dismiss a ministry he has thus defined: 'If they exhibit internal dissensions amongst themselves; if they differ from the sovereign, or from the country at large [upon a question of public policy]; if their measures are ruinous to the interests of the country, at home or abroad; or if there should exist a general feeling of distrust and disapprobation of them throughout the country.'[x]

Furthermore, as observed by Mr. Pitt, 'the sovereign exercises his opinion on the sentiments as well as capacity of his ministers; and if upon either he judges them to be incompetent, or in any degree unfit, it is the prerogative and, with perfect loyalty let me add, the duty of the crown to dismiss such ministers.'[y] For 'the king cannot be required to take advice from men in whom he cannot confide; and, were there no other

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[w] Hallam, Const. Hist. v. 3, p. 392. And see a resolution of the House of Lords, on Feb. 4, 1784. And see May, Const. Hist. v. 1, p. 122.

[x] Mir. of Parl. 1835, pp. 28, 29.

[y] Parl. Hist. v. 35, p. 1121.

reason, a diminution of confidence is a sufficient ground for a change in his Majesty's councils.'[z] But these abstract considerations, as will be hereafter shown, are modified and restrained by the necessity for obtaining the approval of Parliament to the choice of ministers by the crown. For constitutional usage requires that the sovereign shall not exercise his undoubted right of dismissing his ministers for mere personal motives, but solely in the interests of the state, and on grounds which can be justified to Parliament.[a]

Advice of Parliament on the appointment of ministers.

It is the undeniable right of either House of Parliament to advise the crown upon the exercise of this or any other of its prerogatives; but this right cannot be pressed so far as to render the sovereign 'accountable to Parliament for his conduct in changing his advisers,' or as to entitle Parliament 'to question the motives of his Majesty for dismissing ministers who had lost his confidence.'[b]

The House of Lords have nothing to say to the changes which may take place in his Majesty's councils. It is his Majesty's prerogative to appoint his own ministers, and to change them as he pleases; and the House of Lords cannot take into consideration the special circumstances under which such changes have been made, except in particular cases, in which an administration has been removed in consequence of an address from this house.[c]

It has been contended, indeed, that 'it is the right and privilege of the House of Commons to express its opinion and judgment, and even to offer advice to the sovereign, as to the circumstances under which, and the mode in which, he may have been advised to exercise his undoubted prerogative of choosing the ministers of the crown.'[d] But such an interference with the free choice of the sovereign would be justifiable only in the extreme

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[z] Ld. Selkirk, Parl. D. v. 9, p. 377. See Mr. Gladstone's comments upon the dismissal of the Melbourne Ministry, in 1834, by William IV. Gleanings of the Past Years, v. 1, p. 231.

[a] See *post*, v. 2.

[b] Ld. Selkirk, Parl. D. v. 9, p. 377. And see Ld. Colchester's Diary, v 2, p. 119.

[c] Duke of Wellington, Parl. D. N.S. v. 17, p. 455.

[d] Lds. Morpeth and Stanley, Mir. of Parl. 1835, p. 74.

case, if we may suppose that such could occur, wherein the crown had selected unfit or improper persons as its advisers.[e] In all ordinary circumstances, the ministers chosen by the sovereign are entitled to receive from Parliament, if not 'an implicit confidence,' at the least 'a fair trial.'[f] This has been the established rule and practice of the constitution, as the following cases will show :—

King's ministers entitled to a fair trial.

Sovereign's right to nominate ministers.

When Mr. Pitt was appointed prime minister by George III., in 1783, in the face of a hostile majority in the House of Commons, he braved the fierce opposition with which he was encountered, and disregarded the factious obstructions of his foes, until he was in a position to dissolve Parliament and appeal to the people.[g] Adverting, nearly twenty years afterwards, to the conduct of the House of Commons upon this occasion, Mr. Pitt declared that amidst all the violence which characterised the proceedings of the House at the time, the 'general principle' of the sole right of the king to nominate his ministers 'had never been attempted to be denied in the abstract.'[h] The hostility of the House to Mr. Pitt arose, according to Sir Robert Peel, from a suspicion that he owed his appointment to unconstitutional motives; that is to say, to the exercise of secret influence, by means of which it was notorious that the previous administration had been overthrown. But Mr. Pitt took his stand upon the principle that it was irregular for the House to endeavour to control the prerogative of the crown in the choice of its ministers, by denouncing them without waiting to see their acts.[i]

In 1801, after the retirement of Mr. Pitt from office, and the appointment of Mr. Addington to the premiership, an arrangement which was not satisfactory to Parliament, Mr. Pitt expressly claimed for the king 'the sole right of nominating his ministers,' and contended 'that the House had no right to form any resolution till their conduct came to be judged of by the acts of their administration.' He asserted, moreover, that the new ministers were entitled, at the outset, to 'a constitutional confidence'; in other words, 'that unless some good reason were assigned to the contrary, the House was bound, by the best principles of policy, as well as by the true spirit of the constitution, to wait to see the conduct of the ministers of the crown before they should withhold their confidence.'[j] The

[e] Ld. Selkirk's speech, Parl. D. v. 9, p. 377. And see Adolphus, Hist. of Eng. v. 3, p. 466, *n*.

[f] Sir R. Peel's Mem. v. 2, p. 67. Hans. D. v. 191, p. 1728.

[g] See *ante*, p. 144.

[h] Parl. Hist. v. 35, p. 902.

[i] Mir. of Parl. 1841, p. 1937.

[j] See *ante*, p. 150.

House of Commons acquiesced in this reasoning, and refrained from any attempt at disturbing the new ministry.

In 1807, after the dismissal by George III. of the Grenville administration, and the appointment of the Duke of Portland's ministry, debates arose in both Houses of Parliament upon this event, and upon the circumstances which had given rise to it. The ex-ministers had a majority in both Houses. Their friends accordingly endeavoured to embarrass the new government by proposing resolutions expressive of regret at the change in the royal councils. But Parliament, while they were inclined to approve of the conduct of the late ministry in the matter which had occasioned their dismissal, refused to concur in resolutions of censure, or to take any steps which would appear like an attempt to limit the exercise of the prerogative by refusing to the new ministers of the crown a fair trial. Accordingly the resolutions were superseded in the Lords by a motion of adjournment, and in the Commons by a resolution to pass on to the orders of the day.[k] During the debate in the House of Commons, Sir William Grant took occasion to show that the attempt of the late ministers to convert Parliament into a court of appeal against the king's decision was unwarrantable and unprecedented.[l]

In 1812, the newly appointed ministry of Lord Liverpool was vehemently assailed in the House of Commons, and motions were submitted to express regret that men had not been chosen who were more entitled to the support of Parliament, and to the confidence of the country. But after much debate it became apparent that the sense of the House was opposed to any proceedings that might appear like an attempt to dictate to the crown in regard to the choice of its advisers. The leader of the government, moreover, claimed for the new ministry 'the constitutional support of Parliament till their actions should show them to be unworthy of it.' The several motions of censure were then put and negatived.[m]

In 1834 Sir Robert Peel, by desire of William IV., undertook the formation of a ministry, although his party was in a decided minority in the House of Commons. A dissolution of Parliament ensued, but this did not add very materially to the strength of the new administration. Ministers sustained very severe defeats in the new House; nevertheless, Sir R. Peel refused to resign, saying, 'I hold there is nothing unconstitutional, in the post I fill, and in the fulfilment of my duty, to persevere in the discharge of those duties to which my sovereign has called me, in defiance of the majority that is against me upon any abstract question, &c. I will perform

[k] See *ante*, p. 158.

[l] Parl. D. v. 9, p. 474. See also the proceedings in the House of Commons after the death of Mr. Perceval: *ante*, p. 164.

[m] See *ante*, pp. 172, 173.

my duty until the House shall by its vote refuse its sanction to some measure of importance which I think necessary to submit to its consideration.'[n] He accordingly persisted in the attempt to maintain his position, in the face of repeated defeats in the Commons for nearly two months; when, being convinced of the evil of permitting the House of Commons to exhibit itself to the country free from any control on the part of the government, and believing that 'in conformity with the constitution, a government ought not to persist in carrying on public affairs, after a fair trial, against the decided opinion of a majority of the House of Commons,' he resigned, and a new ministry, whose views were in accordance with the opinions of the Commons, was appointed.[o]

Earl Derby in 1852, in 1858, and in 1866, assumed the reins of government, by command of the Queen, with an adverse majority in the House of Commons. Upon each occasion the new ministry were treated with great forbearance by the House, and were permitted to remain in office without molestation or annoyance until they had developed their policy, and had shown themselves to be decidedly at issue with the House of Commons upon some great public question.[p]

The Conservative ministry, appointed in July 1866, continued in office for nearly two years and a half, notwithstanding that their party was in a minority in the House of Commons.[q]

Delays in forming a new ministry. Address to the crown thereon.

The interval between the resignation or dismissal of a ministry, and the appointment of their successors, varies according to the exigency of the case, and the difficulties that may attend the formation of another cabinet. During this interval, should it appear expedient to either House to tender advice to the sovereign in regard to the formation of a ministry—whether it be to urge the appointment of a strong and efficient administration, or even to indicate the political character of a ministry that would prove acceptable to Parliament—it is perfectly constitutional to do so.

In 1783, thirty-seven days (February 24 to April 2) elapsed between the resignation of the Shelburne ministry and the appointment of a Coalition ministry, under the Duke of Portland. On March 24, the Commons passed an address to the king, praying him

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[n] Mir. of Parl. 1835, p. 135. Hans. D. v. 110, p. 1278.

[o] See *ante*, p. 109.

[p] *Ib.* pp. 221, 228, 237.

[q] *Ib.* p. 237.

to form a strong and united administration. His Majesty sent a gracious reply to this address through Earl Ludlow,[r] expressing his earnest desire to do everything in his power to comply with the wishes of his faithful Commons.[s] On March 31, a motion was made for the adoption of another address, representing the urgent necessity which existed for the immediate appointment of an efficient and responsible administration; but after some debate, the motion, being regarded as premature, was withdrawn.[t] Precedents.

Upon the break-up of the Perceval administration, owing to the assassination of the premier, on May 11, 1812, four weeks elapsed before a new ministry, under the Earl of Liverpool, was appointed. On May 21, a motion was made in the House of Commons for an address to the Prince Regent, praying him to form a strong and efficient administration. It being known that the former colleagues of Mr. Perceval were desirous of remaining in office, and were in communication with the prince upon the subject, the motion was resisted by the friends of the late government, on the ground that it was an attempt to interfere with the crown in the choice of its servants, which was not justified by existing circumstances. The motion was nevertheless agreed to by a small majority, and the mover and seconder of the address were ordered to present it to his Royal Highness. The mover reported on the following day that the prince had promised that the address should receive his immediate and serious consideration. Viewing this address as equivalent to a declaration of their own inefficiency, the remaining members of the administration immediately placed their offices at the disposal of the Prince Regent. Negotiations were then commenced with the Whig party, but they proved unsuccessful; and the old ministry was reinstated in office, under the premiership of the Earl of Liverpool.[u]

During this interval, on May 30, and again on June 5, notice was given in the House of Commons for a further address to the Prince Regent, beseeching him to proceed without delay to appoint a strong ministry, in which the House could confide. But the House being informed that negotiations were in active progress, with every prospect of a successful termination, the motions were not made.[v]

A fortnight elapsed between the resignation of Lord Liverpool, on March 27, 1827, and the appointment of the Canning administration. Meanwhile, after eight days had elapsed, notice was given, for April 6th, of an address to the crown, to be pleased to appoint a ministry who were unanimous on questions of vital importance to the empire. But when the day arrived for bringing on this motion, it was withdrawn upon an intimation that the formation of a ministry

[r] He was Comptroller of the Household.

[s] Com. Jour. March 26, 1783.

[t] *Ib.* March 31, 1783.

[u] See *ante*, pp. 161–172.

[v] *Ib.* pp. 168, 170.

was about to take place. Four days afterwards the Canning ministry was appointed.[w]

Precedents of procedure in delays in forming new ministries.

Upon the resignation of the Grey ministry, on May 8, 1832, consequent upon their defeat upon the Reform Bill in the House of Lords, the House of Commons passed an address to the king on the 10th inst., expressing their deep regret at the retirement of ministers, and imploring his Majesty 'to call to his councils such persons only as will carry into effect, unimpaired in all its essential provisions,' the measure of Reform to which the House had recently agreed. The address was ordered to be presented by members of the House who were of the Privy Council.[x] Four days having elapsed without the reception by the House of any reply to their address, the Speaker was questioned upon the subject. He could only state that the address had been placed in proper hands for presentation, and suggest that his Majesty, not having any responsible minister or confidential adviser, might think it better to delay sending an answer till he had such a minister, through whose hands it might be conveyed. This surmise was afterwards confirmed, and declared to have been the reason why no reply had been sent to the address, by the Chancellor of the Exchequer, upon his return to office.[y] For the king, having failed in the attempt to form a Tory administration, had been obliged to recall his late advisers.

Ten days elapsed between the resignation of Sir Robert Peel, in 1835, and the appointment of the Melbourne ministry; and there was a similar interval between the resignation of the Derby ministry, in 1852, and the appointment of their successors. Upon neither of these occasions was there any action taken by Parliament, although a change of ministry is ordinarily effected within one week.

But on February 1, 1855, the Aberdeen Ministry resigned, and the Palmerston Ministry accepted office on the 8th inst. Notwithstanding this short interval, on the motion to adjourn the House of Commons, on February 6, a short debate ensued, in which dissatisfaction was expressed at the delay in forming a ministry, and hints were given that, if much further delay occurred, it might be expedient to address the crown upon the subject.[z]

Having vindicated the right of the sovereign to the free choice of his constitutional advisers, by whom the administration of the government is to be conducted—a freedom which necessitates that they should be unreservedly accepted by Parliament at the outset of their

[w] See *ante*, pp. 174–177.

[x] Mir. of Parl. 1832, pp. 1970–1992.

[y] *Ib.* pp. 2024–2079.

[z] See *ante*, p. 224.

career, and until they prove themselves by their general policy and public conduct to be undeserving of confidence—it remains to be seen to what extent the sovereign is at liberty to exercise his personal inclinations in the choice or dismissal of individual ministers.

Personal inclinations of the sovereign in the formation of a ministry.

The cabinet, as will be hereafter more fully explained, is a committee of the Privy Council. The sovereign is empowered by his prerogative to summon whom he will to the Privy Council; and he is at liberty to dismiss any member thereof, at any time, who may incur his displeasure.[a] As every cabinet minister is necessarily a member of the Privy Council, the sovereign is thereby enabled to remove an obnoxious member from his cabinet council whenever he may think fit to do so. But by modern constitutional practice the freedom of choice possessed by the crown in the selection of its advisers has been subjected to important limitations.

Theoretically, it is presumed that the sovereign acts in this matter according to his own discretion. William III., it is notorious, allowed no interference with his own will in appointing whom he would to fill the high offices of state;[b] but the necessities of parliamentary government, coupled with the inferior capability of his immediate successors upon the throne, soon entangled the reigning monarch in the meshes of party, and deprived him of free agency, even in the choice of his own ministers.

From the accession of the House of Hanover until at least the year 1812, it appears to have been a fundamental article of the Whig creed that the ministers of the crown, and especially the prime minister, should be nominated by the chiefs of their own party, when in power; and that the choice of the sovereign, in regard to his ministers generally, should be limited to the

[a] See *post*, v. 2.

[b] Macaulay, Hist. of Eng. *passim*.

Nomination of ministers by the crown.

members of certain leading aristocratic families.[c] In this they were partially successful, the earlier sovereigns of this dynasty being unable to resist the strength of the party by whom this claim was set up. But George III., immediately upon his accession, endeavoured to free himself from such trammels, and to break down the great Whig oligarchy. As a matter of compromise, he succeeded in making good his right to appoint a portion of every administration, whilst the remainder were nominated by the leading statesmen who were invited to join the same. This arrangement appears to have continued in operation until after the accession of William IV. It was not until Sir Robert Peel took office, in 1834, that we find the present constitutional practice which renders the prime minister responsible for the choice of his colleagues distinctly and unreservedly established.[d]

In 1778, in view of the proposed retirement of Lord North, we find George III. stipulating in regard to the *personnel* of the incoming administration.[e]

In 1782, George III. was allowed to nominate Lord Thurlow as Lord Chancellor and a member of the cabinet, whilst the Shelburne and Rockingham parties introduced five members each.[f] Thurlow was first appointed to the chancellorship in 1778, and continued to hold the office during successive administrations, until 1792, on account of the king's strong partiality for him. But the imprudence of this arrangement was afterwards manifested by Thurlow's own conduct, for he pertinaciously opposed the policy of his colleagues, and boasted of his independence on the ground that he was 'the king's friend.'[g]

During Mr. Pitt's administration, the king, who had great confidence in that statesman, did not interfere at all in his arrangement of the political offices, though in regard to some of them he privately expressed his extreme disapprobation.[h]

Duringthe Regency, in 1812, the negotiations with Lords Grey and

[c] See *ante*, p.236.

[d] In regard to the deference paid to the wishes of the sovereign, in the choice, by the Premier, of his colleagues, see *post*, p.332.

[e] Fitzmaurice, Life of Ld. Shelburne, v. 3, p. 20.

[f] Parl. D. v. 23, p. 413.

[g] Campbell's Chanc. v. 5, pp. 547, 611.

[h] Rose, Corresp. v. 2, pp. 158, 175.

Grenville for the reconstruction of the ministry fell through, because the Prince Regent claimed the right to nominate three members of the cabinet (including the prime minister) himself. This claim was objected to by the Whig lords, not as being unconstitutional, but because they deemed it to be opposed to the spirit of mutual confidence and freedom from suspicion which ought to characterise the cabinet council, and which rendered it essential that parties invited to co-operate in forming an administration should be at liberty to arrange its *personnel* amongst themselves.[i]

Precedents of nomination of ministers by the crown

In 1827, when George IV. accepted Canning as the head of a coalition ministry, he imagined that he would be able to exercise, more directly than before, personal influence and control in nominations to office. This led him to propose Herries as chancellor of the exchequer, and though Canning made no objection to the choice, Lord Lansdowne (with other of his colleagues) demurred to this departure from constitutional usage, and tendered his resignation. The king became alarmed. He consulted the Duke of Wellington, who told him that the choice of a first minister must be the king's own act; that 'it was the only personal act the king of England had to perform; and that when he had appointed his first minister, all the rest devolved upon the person so appointed, who became responsible for the king's acts.' Finally his Majesty yielded the point, and induced Lord Lansdowne to remain in office.[j]

Nevertheless, in 1828, upon the formation of a ministry by the Duke of Wellington, George IV. was requested to state 'whether he had any wishes for particular persons, or objections to any?'[k] When, shortly afterwards, it became necessary to reorganise the cabinet, upon the resignation of Mr. Huskisson and Lord Palmerston, the king forwarded to the duke a list of his own, in which it was proposed to assign different offices to the men recommended by the duke for places in the ministry. The duke objected to the proposed arrangement, whereupon his Majesty did not urge it any further.[l]

Upon the formation of Sir Robert Peel's administration, in 1834, he being abroad when the king resolved upon selecting him as premier, his Majesty appointed the Duke of Wellington to be secretary of state, and named Lord Lyndhurst for the office of chancellor. But it was distinctly understood that this was to be a mere *ad interim* arrangement; and upon the arrival of Sir Robert Peel in England, three weeks afterwards, one of his first acts was the formal recommendation to the king that the Duke of Wellington should be

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[i] Parl. D. v. 23, p. 428.

[j] Torrens, Life of Melbourne, v. 1, p. 233. Colchester's Diary, v. 3, p. 501.

[k] Peel's Mem. v. 1, p. 11.

[l] Well. Desp. 3rd s. v. 4, pp. 455, 462, and v. 5, p. 134.

appointed foreign secretary, and that Lord Lyndhurst should be the chancellor.[m]

Free choice of the prime minister by the crown.

It is only since the accession of George IV. that the unrestricted choice of the crown in the selection of the prime minister himself has been freely admitted by all parties in the state.

During the debates on the Regency, in 1788, Mr. Pitt publicly referred in the House of Commons to the pretensions of the Whig party to be allowed to nominate the king's ministers, including the prime minister. Mr. Fox, who was present, did not attempt to deny the claim.[n] Its existence serves to explain many obscure passages of political history, wherein ministerial negotiations, otherwise promising, proved unsuccessful, because of the attempt to assert the independence of the crown in the choice of its first minister.[o] It continued in operation until the time of the Regency, when Lord Wellesley, having been authorised by the Prince Regent to reconstruct the ministry, after the assassination of Mr. Perceval, failed in the endeavour, as we learn upon Whig testimony, mainly because that party had not been empowered to choose the premier, although they were invited to enter a cabinet to be formed upon their own political principles. In the debate upon the failure of these negotiations, Mr. Canning adverted to this doctrine, and claimed, on behalf of the constitution, that the crown should be unfettered in the choice of its ministers, save only by the advice and control of a free Parliament.[p] It is somewhat remarkable, however, that Mr. Pitt, who in 1783 had contended for the rights of the sovereign in this particular, should himself have been a party, in 1803, to a negotiation with Mr. Addington (the then prime minister) for his own return to power, as the head of the administration, without having previously obtained the consent of the king to the proposed arrangement. The correspondence between Pitt and Addington was presented to the king by the latter, after the scheme had proved abortive; but his Majesty refused to read it, caustically remarking that 'it was a foolish business, which was begun ill, conducted ill, and terminated ill.'[q]

Choice of the premier by his colleagues in the ministry.

The Prince Regent being unable to reconstruct the ministry in 1812, in consequence of the obstinate adherence of the Whig leaders to their favourite maxim, requiring a surrender of the prerogative of the crown in the choice of its advisers as the condition of their support and co-operation, his Royal Highness was induced to appoint

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[m] Peel's Mem. v. 2, pp. 17, 27, 35.

[n] See *ante*, p. 125. Parl. Hist. v. 27, p. 772.

[o] See historical precedents, cited in Stapleton's Canning and his Times, pp. 202–207.

[p] Parl. D. v. 23, p. 455.

[q] See *ante*, p. 151.

Lord Liverpool to be first minister, because it was notorious that every member of the ministry considered him the fittest person to be placed at their head. It was thus that Lord Liverpool began his long and prosperous career as premier.[r]

After Lord Liverpool's resignation, in 1827, Mr. Canning was obviously the one who, from his position and influence, should have succeeded him; but his known opinions in favour of Roman Catholic Emancipation made the king averse to placing him in such a prominent office. Accordingly, after a fruitless interview with Mr. Canning, his Majesty resorted to an undignified and unwarrantable expedient, and sent the following minute to the cabinet: 'That his Majesty is desirous of retaining all his present servants in the stations which they at present fill, placing at their head, in the station vacated by Lord Liverpool, some peer professing opinions upon whom his Majesty's confidential servants may agree, of the same principles as Lord Liverpool.' He afterwards sent a verbal message to Mr. Canning, leaving it to his *discretion* to make or withhold this communication to his colleagues. Mr. Canning being of opinion that it was inexpedient and objectionable to refer the selection of their chief to the suffrages of the cabinet (an opinion which he shared with the Duke of Wellington and Mr. Peel),[s] decided upon withholding it; while he at the same time privately made known to them its general purport, to which they responded by simply expressing their earnest desire for a speedy termination of the present embarrassing position of the government: whereupon the king allowed his proposal to drop. Several days were then spent in conferences between his Majesty and leading members of the cabinet, which terminated at last in the issue of the royal commands to Mr. Canning to prepare, with the least possible delay, a plan for the reconstruction of the administration. Thus commenced the premiership of Mr. Canning, which, in a few short weeks, was brought to a sudden and unexpected close by his premature decease.[t]

The prime minister to be the free choice of the crown.

It is now universally conceded that the prime minister—as *the* minister in whom the crown has placed its constitutional confidence, and who is responsible to his sovereign for the government of the whole empire—should be the free and unbiassed choice of the crown itself. In 1827, as we have seen,[u] the Duke of Wellington declared that this was the sole act of personal

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[r] See *ante*, p. 165.

[s] See Well. Desp. 3rd S. v. 4, p. 18, and Colchester Diary, v. 3, p. 501.

[t] Stapleton, Canning and his Times, pp. 586-590. See *ante*, p. 177.

[u] See *ante*, p. 325.

government now exercised by the king. And in 1845, Sir Robert Peel said, in explaining the particulars of his resignation of office: 'I offered no opinion as to the choice of a successor. That is almost the only act which is the personal act of the sovereign; it is for the sovereign to determine in whom her confidence shall be placed.'[v] A retiring minister may, if requested by the sovereign, suggest that any particular statesman should be empowered to form a new administration, but such advice should not be obtruded upon the sovereign unasked. Being debarred by his own resignation, or dismissal from office, from the constitutional right to tender advice to the crown, he can only do so, if required, in the quality of a peer or a privy councillor; being still responsible, in that capacity, for any advice he may give to the sovereign.[w]

Necessity for ministers to possess the confidence of Parliament.

But while the doctrine is now fully established, that the sovereign has a free choice in the appointment of the prime minister, the selection of that functionary is nevertheless practically limited by the all-important fact, that no minister can, for any length of time, carry on the government of the country who does not possess the confidence of Parliament, and more especially of the House of Commons.[x] This circumstance has contributed to restrain the undue exercise of the prerogative of the crown to choose or change its responsible advisers, at discretion, and to compel the crown, in all its dealings with an administration, to govern itself by considerations of high political expediency.[y] Ample security, moreover, that no changes of ministry will be effected by the authority of the crown but such as would commend themselves to the judgment of Parliament, is

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[v] Hans. D. v. 83, p. 1004. See also Ld. Derby, *ib.* v. 123, p. 1701. Mr. Disraeli, *ib.* v. 214, p. 1043. And Massey's George III. v. 3, p. 213.

[w] See *ante*, p. 116.

[x] See *post*, v. 2.

[y] See *ante*, p. 316. And see Martin's Pr. Consort, v. 1, p. 110. And Prince Albert's opinion, quoted by Earl Russell, in Hans. D. v. 165, p. 44.

obtained by the operation of the constitutional rule which requires that whenever a change of ministry takes place in consequence of an act of the crown, the incoming ministers shall be held responsible to Parliament for the policy which occasioned the retirement of their predecessors in office.[z]

New ministers responsible for dismissal of their predecessors.

This principle was first recognised by Mr. Pitt in 1783, when he accepted office upon the dismissal of the Portland administration.[a]

It was qualified by Mr. Perceval, in 1807, who, while admitting that every act of the crown must be vouched for by a responsible minister, nevertheless contended that, in the interim between successive ministries, the action of the crown was necessarily independent; and that whatever then took place was beyond Parliamentary criticism or censure.[b] But this argument was distinctly repudiated in 1835, when Sir R. Peel took office.

In 1807, when George III. dismissed the Grenville ministry, because of their refusal to carry out his particular views in reference to the Roman Catholics, the incoming administration endeavoured to evade the responsibility which had devolved upon them in regard to the change of government: but it was emphatically asserted, by the best parliamentary authorities, 'that there was not a moment in the king's life, from his accession to his demise, when there was not a person constitutionally responsible for his actions;' and that although he might seem to be acting without advice when, in the exercise of his undoubted prerogative, he dismissed his ministers and appointed others, yet that the incoming ministers were themselves responsible for the dismissal of their predecessors.[c]

In 1834, William IV., having become a convert to Tory principles, suddenly determined to dismiss the Whig ministry of Lord Melbourne. It did not appear that either the interests of the state or the wishes of Parliament necessitated this proceeding; for there had been no immediate difference of opinion between the king and the cabinet on any point of public policy, nor had ministers lost the confidence of the House of Commons.[d] His Majesty, however, determined to entrust to Sir R. Peel the formation of a new ministry. Sir Robert was absent from England at the time, and was ignorant of the circumstances attending the dismissal of Lord Melbourne. When

[z] Grey, Parl. Govt. 180, *n.* Hearn, Govt. of Eng. p. 98. Ld. Brougham, in Mir. of Parl. 1835, p. 25; and see *ante*, pp. 135, 196.

[a] See *ante*, p. 118.

[b] *Ib.* p. 158. Hans. D. v. 246, p. 253.

[c] See *ante*, p. 158. And see the case of Ld. Danby, cited by Lds. Lauderdale and Holland, on this occasion, Hans. D. v. 9, pp. 405, 414.

[d] See *ante*, p. 133.

informed of the facts, he expressed great doubts of the policy which had occasioned the change of government. Nevertheless, so fully did he recognise the extent of his obligations in accepting office, that he boldly avowed his constitutional responsibility 'for the dissolution of the preceding government, although he had not the remotest concern in it.'[e] The late ministry had a large majority in the House of Commons, and one of Sir R. Peel's first acts was to appeal to the people. The new House, although more favourably inclined to the new minister, failed to put him in a sufficiently strong position to enable him to carry on the government; and, after a gallant struggle for several weeks against an adverse majority, Sir R. Peel was compelled to retire from office. The king had then no alternative but to recall to his councils the Melbourne ministry, which he had before so summarily dismissed.

Formation of a new ministry.

Upon the resignation or dismissal of a ministry, it is customary for the sovereign to send for the recognised leader of the Opposition, or for some other person of known weight and influence in either House of Parliament, who is capable of leading successfully the political party to which he belongs, and to authorise him to undertake the formation of a new administration. It is not essential, however, that the person selected to bring about the construction of a new cabinet should be the intended prime minister. It may be difficult at first to fix upon any one suitable for this office with whom a new administration could be induced to co-operate. Under such circumstances some less prominent person could be chosen to negotiate for the formation of the ministry.

Thus, in 1742, upon the resignation of Sir Robert Walpole, George II. (upon the advice of Walpole) sent for Mr. Pulteney, the leader of the Opposition, and empowered him to form a new administration. Having the disposition of places in his own hands, Pulteney refused to accept office for himself, demanding only a peerage and a seat in the cabinet.[f]

In 1812, Lord Moira received a commission of this kind from the Prince Regent, with the understanding

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[e] Peel's Mem. v. 2, p. 31.

[f] Ewald, Life of Walpole, pp. 422-425.

that he should receive some inferior office, together with a seat in the cabinet.[g]

1859. Selection of premier.

In 1859, upon the resignation of the Derby ministry, consequent upon the adoption, by the House of Commons, of a vote of want of confidence, which was moved by Lord Hartington, the Queen charged Lord Granville to form a ministry, upon the ground that 'to make so marked a distinction as is implied in the choice of one or other as prime minister, of two statesmen, so full of years and honours as Lord Palmerston and Lord John Russell, would be a very invidious and unwelcome task.' But notwithstanding Lord Palmerston's willingness to serve under Lord Granville, Lord John Russell was not equally compliant. Accordingly, Lord Granville failed in his endeavour; whereupon Her Majesty commissioned Lord Palmerston to form a ministry.[h]

But if, in the opinion of the sovereign, the state of parties would render a coalition ministry expedient, the sovereign would suitably communicate directly with the two leading statesmen whose co-operation was desired, indicating of course the one to whom the formation of the ministry was entrusted.[i]

Prime minister empowered to choose his colleagues.

We have already seen that it has of late years become a settled principle that the political chiefs to whom the sovereign may confide the task of forming a ministry are at liberty to select the individuals to compose the same, and to submit their names for the royal approval. This privilege is indispensable to the successful working of our parliamentary system, and, after a long struggle, it has been conceded to every political party which may, in turn, acquire the pre-eminence.[j] It

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[g] See the Duke of Wellington's remarks on this point, in Hans. D. N.S. v. 17, p. 464; and in Well. Desp. 3rd. S. v. 3, pp. 636–642; v. 4, pp. 3, 17, 22.

[h] See *ante*, p. 234.

[i] *Ib.* p. 222.

[j] See *ante*, p. 324. And see Lewis, Adminis. p. 96. Mr. Canning's letter of 1827, in Hans. D. N.S. v. 17, p. 457; Duke of Wellington's letter of 1828, in Peel's Mem. v. 1, p. 11; Sir R. Peel, Evidence, 285, Com^e. on Official Salaries, in 1850; and see Mill, Rep. Govt. p. 96.

1859. is a constitutional necessity that the first minister of the crown should be able to assume full personal responsibility before Parliament for the appointment of every member of the administration. This he can only do when he has been empowered to advise the crown in regard to the selection of the persons who are to be associated with him in the functions of government. The sovereign has, indeed, an undoubted right to express his wishes in favour of the introduction or exclusion of particular persons, but by modern constitutional usage he has no authoritative voice in the selection of any one but the prime minister. It is true that, in this as in other matters, the expression of a strong personal feeling on the part of the crown may have great weight in excluding a person from office, or including him, at least for a time; but even this consideration must ultimately yield to a regard for the public interests, and the sovereign must be prepared to accept as his advisers and officers of state those who have been chosen for such functions by the premier.

Personal feelings of the sovereign in the selection of ministers.

George III., it is notorious, had such a repugnance to Mr. Fox, that for a long time he absolutely refused to admit him into the cabinet.[k]

In 1801, after entrusting the formation of a new ministry to Mr. Addington, and giving him full authority to make such arrangements for carrying on the public service as he should think fit, George III. expressed a 'wish' that he might be enabled to place the Great Seal in the hands of Lord Eldon, and place Sir Pepper Arden in the office of Chief Justice of the Common Pleas.[l] Both these appointments were conferred agreeably to the king's desire. George IV. refused to allow the readmission of Mr. Canning into the cabinet, in 1821, after the death of Queen Caroline, although he had retired therefrom a few months previously, solely on account of his objections to taking part in the proceedings against the queen.[m] A year afterwards, the premier (Lord Liverpool) renewed

[k] Stanhope, Life of Pitt, v. 4, p. 170. Jesse, Life of George III. v. 3, p. 365.

[l] Pellew's Life of Sidmouth, v. 1, p. 298.

[m] Yonge, Life of Ld. Liverpool, v. , pp. 142-150.

his appeal to the king on Mr. Canning's behalf, but still without success; until at length, through the intercession of the Duke of Wellington, his Majesty was induced, very reluctantly, to yield.[n] In 1823, in deference to the wishes of the king, the claims of Mr. Huskisson to a seat in the cabinet were not pressed.[o] In 1827, Mr. Herries was appointed Chancellor of the Exchequer, to please the king, instead of Lord Palmerston, who was the nominee of the premier (Lord Goderich). The appointment proved disastrous to the fate of the ministry.[p] Though a member of the succeeding administration, the king's desire to see him reinstated at the Exchequer was not acquiesced in by the new premier (Duke of Wellington).[q] When the Wellington Coalition ministry was about to be formed, in 1828, George IV., while expressing his wishes in regard to several statesmen, on the whole gave a *carte blanche* for the selection of any persons who had heretofore been in his service, except Lord Grey, whom he objected to receive again into the cabinet.[r] Upon the reappointment of the Melbourne ministry, in 1835, William IV. stipulated that Lord Brougham, who was personally displeasing to his Majesty, should not be replaced in the office of Lord Chancellor.[s] 1859.

Sanction of the crown in appointment of a new minister.

In like manner, in the event of a vacancy occurring in an administration, whether from ordinary circumstances, or as the unavoidable result of differences between individual members of the same, it is the duty of the prime minister to take the pleasure of the crown in regard to the appointment of some one selected by himself to fill the vacant office.[t] And, as Lord Liverpool ventured to assure George IV., in a Memorandum urging upon the king the propriety of accepting Mr. Canning as a cabinet minister, that 'the principle of exclusion has rarely been attempted without having the effect of lowering the crown and exalting the individual proscribed.'[u]

If difficulties should occur in the formation of a

[n] Yonge, Life of Ld. Liverpool, v. 3, pp. 194–202. Stapleton, Canning and his Times, pp. 323, 363. See the Duke's Mem. to the King of Sept. 7, 1822, in the last series of his Desp.

[o] Well. Desp. 3rd S. v. 2, pp. 9, 132.

[p] See *ante*, p. 179.

[q] Herries' Memoirs, c. viii.

[r] Peel's Mem. v. 1, p. 12.

[s] Howley, Brit. Const. p. 269; Ann. Reg. 1835, p. 237.

[t] See *post*, v. 2.

[u] Yonge, Life Ld. of Liverpool, v. 3, p. 148.

1859. ministry, it is always competent for the sovereign to send for, and take the advice of, any peer or privy-councillor of weight and experience in public affairs, whose counsel he might consider would be serviceable to him in the emergency.

The king consults peers on the formation of a ministry.

Thus George II. repeatedly availed himself of the advice of Sir Robert Walpole, upon state emergencies, after the retirement of Walpole from public life.[v] In 1812, upon the crisis arising out of the assassination of Mr. Perceval, when it became necessary to reconstruct the cabinet of which he was the chief, the Prince Regent applied for and acted upon the advice of his brother, the Duke of Cumberland.[w] In 1827, during the interregnum occasioned by the break-up of the Liverpool Administration, on account of the death of the premier, and the delay in the formation of a new ministry by Mr. Canning, the Duke of Newcastle used his privilege as a peer to obtain an audience of the king, at which he threatened the withdrawal of the support of the Tory party from the government if his Majesty should select Mr. Canning as prime minister.[x] Upon the resignation of the Russell ministry in 1851, after several ineffectual attempts on the part of various statesmen to form a new administration, her Majesty sent for the Duke of Wellington, not for the purpose of entrusting the making of a cabinet to his hands, but in order that she might take counsel from him in regard to the existing state of affairs, determining also 'to pause awhile before she again commenced the task of forming an administration.'[y] Again, in 1852, upon the resignation of the Derby ministry, and in 1855, after the resignation of Lord Aberdeen, her Majesty sent for the Marquis of Lansdowne for a similar purpose.[z] Both the Duke of Wellington and (after his death) the Marquis of Lansdowne, from their eminent position, acknowledged patriotism, and freedom from all selfish aims, were regarded by common consent as the personal advisers and referees of the Queen. In this capacity they often and successfully intervened to reconcile political adversaries and rival competitors for power, and afforded substantial assistance to the crown upon occasions of grave emergency.[a]

The act of the sovereign, in communicating with trusty counsellors in circumstances of political exigency, is in strict accordance with constitutional principle; and

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[v] Ewald's Life of Walpole, p. 442.
[w] Campbell's Chanc. v. 7, p. 280.
[x] Stapleton's Canning and his Times, p. 582.
[y] Hans. D. v. 114, pp. 1033, 1075.
[z] *Ib.* v. 123, p. 1702. Martin's Pr. Consort, v. 3, p. 205.
[a] Sat. Rev. Feb. 7, 1863, p. 168.

it is not to be confounded with the attempts made by George III., during the early years of his reign, to govern with the aid of secret and irresponsible advisers. For advice given to the sovereign upon any such emergency, the peer or privy-councillor is liable to be called to account by Parliament, should his counsel be followed by consequences that require parliamentary interposition.[b] 1859.

Mutual confidence between the king and his ministers.

Once a ministry is formed, it becomes the duty of a constitutional monarch to give it his implicit confidence and support, co-operating heartily and sincerely with the members of his cabinet, so long as he may consider that the best interests of the country are served by their continuance in office; and so long as the ministry retain the confidence of parliament. Should the sovereign have reason to believe that the public interests would be promoted by a change in his advisers, he is at liberty to insist that they shall give place to others, in whom he can repose more perfect trust: but he must always take care to assure himself beforehand that the proposed alteration in the ministry is one that will satisfy the nation, and will merit and secure the approbation of Parliament.[c]

Cabinet councils not attended by the sovereign.

The sovereign never attends at meetings of the cabinet council. Previous to the accession of the present dynasty it was otherwise; and so long as it was consistent with the practice of the constitution for the monarch to take an active and immediate part in the direction of public affairs, it was fitting that no meeting of the cabinet should be held without his presence. But under the existing system of government, through responsible ministers, it is obvious that in order to enable the cabinet to arrive at impartial conclusions upon any matter, it is necessary that their deliberations should be private and confidential.[d]

[b] See *ante*, p. 118. [c] *Ib.*, p. 136. [d] See *post*, v. 2.

The sovereign and the prime minister.

The proper medium of communication between the sovereign and the administration collectively is the prime minister; not merely on account of his position as head of the government, but especially because he is the minister who has been personally selected by the sovereign as the one in whom the crown reposes its entire confidence. He is bound to keep the sovereign duly informed of all political events of importance, including the decisions of Parliament upon matters of public concern. Formal decisions of the cabinet upon questions of public policy are also submitted to the sovereign by the prime minister, upon whom it devolves to take the royal pleasure thereupon. Subordinate ministers, however, have the right of access to the sovereign and of direct communication with him, upon departmental business.[e]

Etiquette in writing to the sovereign.

The mode in which ministers address the sovereign in epistolary communications is peculiar. It is the established etiquette for the minister to use the third person, and to address his sovereign in the second.[f] When or by whom this epistolary form was introduced is unknown. Mr. Grenville's letters to George III., in 1765, are in the ordinary form.[g] But, twenty years later, we find Mr. Fox employing the phraseology which is now in use: '*Mr. Fox* has the honour of transmitting to *your Majesty* the minute of the cabinet council assembled this morning at Lord Rockingham's, 18th May, 1782.'[h]

Royal sign-manual.

When it is necessary to obtain the royal sign-manual to any important document, the various secretaries and other ministers of state who may require it, in their respective departments, should make personal

[e] See further on this subject, *post*, v 2.

[f] Corresp. William IV. with Earl Grey, v. 1, pp. xiii., 300. Lewis, Adminis. p. 34, *n*.

[g] Grenville Papers, v. 3, pp. 4-15.

[h] Russell's Fox, v. 1, p. 351; Stanhope's Pitt, v. 4, Appx. pp. i. *n*, xiii.

application for the same. But if the paper to be signed be of an ordinary and unimportant character, it may be transmitted to the sovereign in a departmental despatch-box.[i] It is the duty of the Lord Chancellor to attend upon the sovereign in order to obtain the sign-manual for the sanction of bills that have passed the two Houses of Parliament.[j]

Royal sign-manual, when dispensed with.

If at any time the sovereign should be unable, through physical infirmity, to append the royal sign-manual to the multifarious papers which require his signature, the intervention of Parliament must be invoked to give legal effect to the arrangements necessary under the circumstances.[k] In the last year of the reign of George IV., an Act was passed authorising his Majesty to appoint one or more persons to affix his royal signature to papers, by means of a stamp, the state of the king's health being such as to render it painful and inconvenient for him to sign his own name.[l] And in 1862, with a view to relieve her Majesty from the excessive labour of signing every separate commission for officers of the army, marines, &c., after having already signed a 'submission paper' authorising the issue of such commission, an Act was passed empowering the Queen in Council to direct that the said commissions may be signed by the commander-in-chief and a secretary of state, and to dispense with the necessity for the royal signature being appended thereto.[m] The urgency for this relief will be apparent when it is stated that in 1862 her Majesty was signing commissions of 1858, and that up to the time when an Order in Council was issued to permit the commander-in-chief and the secretary of state to sign on her behalf, there

[i] Hans. D. v. 165, p. 841.

[j] Campbell's Chanc. v. 7, pp. 157–159.

[k] See Clode, Mil. Forces, v. 2, p. 440.

[l] 11 George IV. & 1 William IV. c. 23. And see Well. Desp. Civil S. v. 7, pp 9, 60–67.

[m] 25 Vict. c. 4. See the debates on this Bill, in Hans. v. 165, and *Ib.* v. 176, p. 2020.

were 15,931 commissions remaining unsigned. These arrears were soon cleared off; but the Queen still undertook to sign first commissions; and these had so accumulated, that up to June 1, 1865, there were 4,800 first commissions awaiting her signature. But arrangements were then made to prevent the recurrence of such delays.[n]

Delegation of royal functions.

If circumstances should occur at any time that would render the personal exercise of the royal functions inconvenient or impossible, the powers of the crown may be temporarily delegated to commissioners or other substitutes. The only exception appears to be in regard to the power of creating peers, which has never been made the subject of delegation.[o] Neither can a commission be granted for the purpose of signifying the royal assent to bills in Parliament, except with respect to specified bills, which have passed both Houses at the date of the commission.[p]

Absence of sovereign from the realm.

The most general delegation by the crown of its political power has been that which has taken place from time to time in the appointment, by the sovereign, of Lords Justices and Guardians for the administration of the government during the absence of the sovereign from the realm. The powers granted to such persons have usually included every possible exercise of the royal authority, except that of assenting to bills in Parliament, and of granting peerages. But it has been customary to accompany the commission by instructions, requiring the commissioners not to exercise certain of the powers granted (particularly those for the pardon of offenders and the dissolution of Parliament) without special signification of the royal pleasure.

During the long reign of George III. the sovereign was never absent from England; and his son and suc-

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[n] Rep. Com[s]. Pub. Accounts, Com. Pap. 1865, v. 10; Evid. 2060-2065, 2118-2127. Hans. D. v. 180, p 973.

[o] Cox, Eng. Govt. pp. 614 617.

[p] *Ib.* p. 49.

cessor, George IV., went abroad once only, in the year 1821, when Lords Justices were appointed by his Majesty in Council. After the accession of the present Queen, her Majesty, in the year 1843, paid a short visit to the King of the French at the Château d'Eu; and again, in 1845, visited Germany. Upon both these occasions, the opinion of the law-officers of the crown was taken, as to whether there was any legal necessity for the issue of a commission appointing Lords Justices during her Majesty's absence. Each time the law-officers were clearly of opinion that it was unnecessary. The question then resolved itself into one of expediency; and considering the great facilities for speedy communication afforded by the general introduction of the railway system, and the circumstance that her Majesty would necessarily be accompanied by a responsible minister of the crown, and could therefore perform any royal act required of her with as much validity and effect on the continent of Europe as if it were done in her own dominions, the ministry decided that it was quite unnecessary to advise the appointment of Lords Justices, 'really for no practical purpose.'[q] Royal visits abroad have since been of no infrequent occurrence, and as no appointment of Lords Justices has taken place upon such occasions, the practice may be considered to have fallen into desuetude.[r]

Royal functions in abeyance during illness of George III

It is essential to the due execution of any powers by delegation from the crown, that a special authority, under the royal sign-manual, should be issued for the purpose. But, in 1788, a difficulty presented itself on this score, arising out of the melancholy condition of George III., who was first attacked by insanity at that time.

[q] Ld. Chanc. Lyndhurst, in Hans. D. v. 82, p. 1514. Mr. Disraeli, *Ib.* v. 228, pp. 700, 882. And see *ante*, p. 270.

[r] Campbell's Chanc. v. 4, p 125, *n.*

The mental disorder which afflicted the king was of such a serious character, that it rendered it imperative upon Parliament to take immediate steps to supply the defect in the royal authority for so long a period as the king's illness might continue. Parliament then stood prorogued for a particular day, upon which, under ordinary circumstances, it is probable that it would not have assembled. But, taking advantage of the authority of the royal proclamation, ministers determined to meet Parliament without further delay, and deliberate upon the posture of affairs. After full enquiries had been instituted, by both Houses, into the state of his Majesty's health, they agreed to a resolution, that it was the right and duty of the Lords and Commons assembled in Parliament to provide for the exercise of the royal authority, in such manner as the exigency of the case might appear to require. It was then resolved by both Houses, that it was expedient and necessary that letters-patent for opening Parliament should pass under the Great Seal. This was done accordingly; and, so far as was possible, under these painful and unprecedented circumstances, the usual forms for the opening of Parliament were adhered to, notwithstanding the incapacity of the sovereign.[s] But in the proceedings had upon this occasion, the two leading statesmen, Pitt and Fox, with their respective followers, were at issue. Pitt contended that Parliament alone was competent to make good the deficiency in the executive authority; whilst Fox claimed for the Prince of Wales an inherent moral, if not legal, right to assume the crown, as though the king his father were actually dead. A succinct account of this memorable controversy will be found in 'May's Constitutional History.'[t] It will suffice here to state the general

Proceedings to supply defect in the kingly office.

[s] Parl. Hist. v. 27, p. 653, *et seq.*
[t] V. 1, pp. 146-162. See also Lewis, Administ. p. 112.

results arrived at, so far as they establish an important point of constitutional law.

The decision of Parliament upon this great question was given exactly one hundred years after the determination, by the same authority, of another question, of still more importance, affecting the right of succession to the English throne—viz., the devolution of the crown upon the 'abdication' of James II., which took place in the year 1688. For those who are curious in such points, it may also be noted that exactly ten years elapsed between the births of the following statesmen, all of them among the most prominent characters of this remarkable era:—Mr. Fox was born in 1749; Mr. Pitt and Lord Grenville in 1759; the Duke of Wellington, Lord Castlereagh, and Napoleon Bonaparte, in 1769.[u] Moreover, William IV. received from Earl Grey the draft of the Reform Bill on January 31, 1831, the anniversary of the martyrdom of Charles I.[v]

Parliament to supply deficiency in kingly office when required.

It was argued by Mr. Pitt, who was then prime minister, that in conformity with the principles established by the Revolution of 1688, and by the Bill of Rights, the Lords and Commons represented the whole estates of the people, and were, therefore, legally as well as constitutionally, empowered to supply any deficiency in the kingly office, whensoever that should arise; that this assumption of power was not incompatible with the principle of an hereditary monarchy, but was essential as a safeguard of the throne itself against encroachment from any quarter. Having succeeded in obtaining the concurrence of Parliament to these conclusions, Mr. Pitt admitted that, as a matter of discretion, the Prince of Wales ought to be called upon to assume the regency, with all necessary authority, unrestrained by any permanent council, and with a free choice of his political servants. But he contended that any power which was not essential, and which might be employed to embarrass the exercise of the king's authority, in the event of his recovery, should be withheld. This was strenuously opposed by Fox, who maintained that the regent ought

[u] Lewis, Administ. p. 301 *n*.

[v] See *ante*, p. 188.

to possess the full authority and prerogatives of the crown, without any diminution. Parliament, however, agreed to the views propounded by Mr. Pitt, and the Prince of Wales consented to accept the regency upon these terms. The proposed restrictions upon the exercise of the regal authority by the prince were defined and embodied in a bill, which it was intended should be passed by both Houses, and receive the royal assent 'by a commission to be ordered by the two Houses of Parliament, in the king's name.' The bill actually passed the Commons, but during its progress through the Lords, the king's convalescence was announced, and the bill was dropped.

In 1801 the king was threatened with a return of insanity, and the premier, Mr. Addington, had determined to follow the precedent established in 1788, when, happily, the king's recovery rendered any such proceedings unnecessary.[w] But in 1810 the king's malady again showed itself, this time destined to remain, and to terminate only with his life. Mr. Spencer Perceval was prime minister at this juncture, and he decided to adhere strictly to the precedent afforded by the proceedings in 1788, in every essential particular.[x] The ministerial plan was warmly opposed in Parliament, but was carried, nevertheless, without alteration. The Opposition did not then maintain that the Prince of Wales, as heir-apparent, succeeded of right to the regency during the king's incapacity. Mr. Lambe (afterwards Lord Melbourne)—upon the resolution that certain restrictions should be imposed upon the regent—moved an amendment, 'That the entire royal power should be conferred upon him, without any restrictions.' This amendment was negatived, by a majority of 224 to 200. Lord Brougham remarks upon these two precedents that they

Return of the king's malady.

[w] Pellew's Life of Sidmouth, v. 1, p. 347.

[x] Lewis, Administ. p. 325. Walpole, Life of Perceval, v. 2, chs. v. and vi.

'have now settled the constitutional law and practice in this important particular.'[y]

Notwithstanding the authority of Lord Brougham, his successor, Lord Campbell, adheres to the Whig doctrine in regard to this question, and stoutly maintains that the Imperial Parliament had no right to interfere with the assumption by the Prince of Wales of the regal authority during the incapacity of the king, his father; but should have imitated the example of the Irish Parliament, in 1789, in acknowledging the right of the prince, and in addressing him to take upon himself the government as regent.[z]

The pre-eminence of the king, by virtue of his prerogative, is such that he cannot be sued in any court, either civilly or criminally. Nevertheless, the law has provided a remedy for injuries proceeding from the crown which affect the rights of property; as where it is alleged that the crown is in wrongful possession of real or personal property to which the subject has a legal title, or of money which is due to the subject from the crown—either by way of debt or damages on breach of contract—and where there is an absence of an appropriate compulsory remedy against the crown.[a] It cannot be presumed that the crown would knowingly be a party to the injury of a subject, yet it might commit injustice by misinformation or inadvertency, through the medium of some responsible agent. It is therefore fitting that the subject should be authorised to represent to the sovereign, in a respectful manner, the nature of the alleged grievance, in order to enable a remedy to be applied. This remedy is by means of a Petition of Right, a mode of procedure, the origin of which has been traced back to the reign of Edward I., if not to Magna Carta itself.[b]

Petition of Right.

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[y] Sketches of Statesmen, v. 1, p. 176.

[z] Campbell's Chanc. v. 5, p. 337; v. 6, pp. 180, 583; v. 7, p. 96. See a debate in the H. of Com. on the Regency question, on July 6, 1830

[a] Att.-Gen. Palmer, Hans. D. v. 176, p. 2120. Thomas *v.* The Queen. L. T. Rep. N. S. v. 31, p. 439.

[b] Inquiry to Petitions of Right, by A. Cutbill (London, 1874). And a treatise (privately printed) by Mr.

But a Petition of Right will not lie to enforce a claim to a share of money received by the crown under a treaty, in discharge of claims of subjects. The crown cannot be coerced to do justice. Where the sovereign receives money for distribution, such distribution is not subject to the control of a court of law. It must be administered by the advisers of the crown, who are responsible to Parliament; and an application to Parliament is the only remedy of an aggrieved party.[c]

It has been held that a Petition of Right does not lie to recover compensation from the crown for damage to the property of an individual occasioned by the negligence of the servants of the crown,[d] nor to recover compensation for a wrongful act done by a servant of the crown in the supposed performance of his duty.[e] Public officers are themselves personally liable under the law and constitution for any dereliction of duty.[f] Although the law will afford protection to all officials in the performance of duties imposed upon them by Government, as well against their own subordinates as against the general public.[g]

Petitions of Right.

The law in regard to Petitions of Right was amended and simplified in 1860, by the Act 23 & 24 Vict. c. 34; which was extended to Ireland in 1873 by the Act 36 & 37 Vict. c. 69. The object of this Act is to assimilate the procedure upon such petitions as much as

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Archibald, in the form of a letter addressed to Ch. Justice Bovill. Broom, Const. Law, pp. 241, 726 (*k*); Cox, Eng. Govt. p. 416. For the present procedure see Scott *v.* The Queen, in Fost. and Fin. Nisi Prius Cases, v. 2, p. 634. And L. T. v. 54, p. 109. Day, Common Law Practice.

[c] Rustomjee *v.* The Queen, L. T. Rep. N. S. v. 34, p. 278. Confirmed by the Court of Appeal, *Ib.* v. 36, p. 190.

[d] Viscount Canterbury *v.* The Attorney-Gen. 1 Phill. p. 306.

[e] Tobin *v.* The Queen, C. B. N. S. v. 16, p. 310.

[f] Attorney-Gen. (R. Palmer) in Hans. D. v. 176, p. 2121. And see *post*, p. 495.

[g] See Thomas, Cases in Const. Law, p. 71. And *post*, p. 499. For a comparison of the laws in the principal States of Europe and America affording redress to private persons against the Government, see Am. L. Rev. v. 6, pp. 156-158; v. 10, p. 81. A petition of right will not be issued from an English Court in reference to claims in Colonies possessing a separate legislature, Holmes *v.* The Queen, L. T. Rep. N S. v. 5, p. 548. The Parl. of Canada, in 1876, by Act 39 Vic. c. 27, made provision for the institution of suits against the Crown by Petition of Right.

possible to that which is adopted in cases between subject and subject, and to permit Petitions of Right to be entertained by any of the superior courts of law or equity at Westminster. It provides that any such petition shall be left with the secretary of state for the home department, in order that the same may be submitted for her Majesty's consideration. If she think fit, the Queen will grant her fiat that right be done, when the merits of the suit will be investigated by the proper court, and judgment given according to law.[h]

Petitions of Right.

It is a mistake to suppose that whenever a Petition of Right is presented, the sovereign should be advised to write upon it *soit droit fait*, whatever may be its prayer, leaving it to the courts to decide whether it contains any grounds for relief. By the law and constitution of England a suit cannot be maintained against the sovereign, without the express consent of the crown. That consent cannot properly be withheld when sufficient foundation or *primâ facie* groundwork for the claim put forth has, in the statement of facts on behalf of the petitioner, been adduced;[i] but it ought to be withheld, by advice of the attorney-general, where it is clear that no relief can be afforded. The attorney-general is answerable to Parliament for the advice he may give as to the granting or withholding of a Petition of Right, in like manner as he would be in respect to the granting of a writ of error, or a *nolle prosequi*.[j]

Mr. Irwin's case.

In 1863, in the case of Mr. G. O'Malley Irwin, it was contended by Sir Fitzroy Kelly (ex-attorney-general), in his place in Parliament, that 'it was not competent or consistent with the duty of any officer of the crown to advise the Queen to withhold her fiat to any Petition of Right, upon any ground, whether right or wrong, whether well or ill founded. Such an interference was only to be justified in a case where a petition appeared to be founded on fraud,

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[h] See a return of all Petitions of Right fiated by her Majesty under the Act 23 & 24 Vic. from 1860 to 1876, with the result in each case; Com. Papers, 1876, v. 61, p. 267.

[i] Broom's Leg. Max. p. 61 *n.*

[j] Campbell's Chanc. v. 7, p. 408 *n.*

Petitions of Right.

or upon gross and manifest error.' In reply, the solicitor-general (Sir Roundell Palmer) stated, that he was prepared to show that Mr. Irwin's petition 'had been presented in gross and manifest error, and that no minister could be justified in advising the crown to give its fiat to that so-called Petition of Right.'[k] On July 26, 1864, a motion was made in the House of Commons for an address to the Queen that she would be pleased to grant her fiat to the Petition of Right of Mr. O'Malley Irwin, or to satisfy his claims without suit. But the attorney-general reviewed the facts of the case, showed that Mr. Irwin's claims were frivolous and untenable, and declared that if the law-officers had put their fiat on his petition, they would have adopted a different course to that pursued by their predecessors in office, and would have given advice the tendency of which must have been most pernicious. After a short debate, the motion was negatived. Previous to this discussion in the House of Commons, Mr. Irwin had brought an action in the Court of Common Pleas against Sir George Grey, the secretary of state for the home department, to recover damages for his having refused or neglected to present to her Majesty his Petition of Right in relation to certain claims upon the crown to the extent of 100,000*l.*, for alleged damages sustained by reason of a prosecution against him in Ireland.[l] The case was tried before the lord chief justice and a special jury, in December 1862. Sir George Grey stated that he had presented Mr. Irwin's petition to the Queen, with the advice that it should not be granted; that he had acted on the advice of the then attorney-general, Sir R. Bethell, and that the plaintiff had been duly informed of the result. The lord chief justice then told the jury that if they believed the home secretary's statement—that he had presented the petition to the Queen, 'accompanied with certain advice which he, as a responsible minister of the crown, considered it to be his duty to give,' he had been guilty of no breach of duty,—they ought in such a case to give a verdict for the defendant. The jury at once declared that they believed the statement, and gave their verdict for the defendant accordingly.[m] Subsequently, the plaintiff moved for a new trial on the ground of misdirection, but took nothing by his motion, the court being of opinion that the question as to the nature of the advice given to the crown by the secretary of state ought not to have been answered. The only thing for the court to enquire into was whether the Petition of Right had been presented to the Queen by the home secretary, and advice tendered to her Majesty

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[k] Hans. D. v. 172, p. 1174.

[l] See comments on this case, in Tobin *v.* The Queen, 16 C. B. Rep. N. S. p. 368.

[m] Dublin Evening Post, Dec. 6, 1862. And see Index to the Times for 1863, *verbo* Irwin, Mr.

thereupon. But 'the advice he gave ought not to have been divulged.'[n] Petitions of Right.

In 1867, the case of Mr. Irwin came before the House of Lords, on appeal from the decision of the Court of Common Pleas, but judgment was given against him. He then petitioned for a rehearing, but that was refused by the Appeal Committee.[o] On May 7, 1867, he petitioned the Lords to address the Queen either to grant her *fiat* to his Petition of Right, or to satisfy his claim on her Majesty 'without suit at all.' But no action was taken on this petition.[p]

The foregoing case has established the point that the advice to be given to the crown, by its responsible ministers, upon a Petition of Right, is discretionary; and that ministers are responsible for the same to the sovereign and to Parliament, but not to the ordinary courts of law.[q]

In 1876, in the case of Rustomjee *v.* The Queen, the Queen's Bench decided, that a Petition of Right does not lie to compel the execution of a trust, or for the distribution of money received by the crown in pursuance of a treaty. Where money was paid to the crown for the use of a subject, the remedy of a subject not receiving the money was not to call upon the crown to account to him as a trustee, but to fall back upon the principle of the accountability of ministers to Parliament.[r]

Personal immunity of the sovereign.

It has been already stated, as a constitutional principle, 'that the personal actions of the sovereign, not being acts of government, are not under the cognizance of law;' and that as an individual he is independent of, and not amenable to, any earthly power or jurisdiction.[s] Some further remarks on this point may be appropriate. The best authorities have declared that there is no legal

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[n] See the case in 3 Fost. and Finl. Nisi Prius Cases, p. 636.

[o] Lds. Jour. 1867, pp. 38, 156, 615.

[p] *Ib.* p. 193.

[q] See also, to the same effect, the case of Dickson v. Viscount Combermere and others; 3 Fost. and Finl. p. 527.

[r] L. T. Jour. v. 60, p. 246. *Ib.* Reports S. N. v. 34, p. 280.

[s] See *ante*, p. 261.

Sovereign in his personal capacity not amenable to authority.

remedy obtainable by the subject for personal acts of tyranny and oppression on the part of the sovereign which have not been instigated by bad advisers, but have proceeded from the personal misconduct of the monarch himself. Should any such cases occur, so far as the ordinary course of law is concerned, they would be covered by the maxim which forbids the imputation of wrong to the sovereign,[t] and the erring prince must be left to the rebukes of his own conscience, and to his personal accountability to God alone. No decisions in regard to common criminal offences committed by any English king are to be found in the books; the jurists contending that the case of a sovereign being guilty of a common crime must be treated as the laws of Solon treated parricide,—it must be considered an impossibility.[u] It was truly observed by Locke, in his essay on 'Government,' that the inconveniency of some particular mischiefs that may happen sometimes, when a heady prince comes to the throne, are well recompensed by the peace and public security which result from the person of the chief magistrate being set out of reach of danger.[v]

Personal acts and opinions of sovereign and royal family not cognizable by Parliament.

It would be unparliamentary to put questions to ministers of the crown, in either House, in regard to any personal acts or opinions of the sovereign, or of any of the royal family, for which ministers are not responsible.[w] In 1871, Mr. Gladstone replied to a question of this kind, under protest, and in order to disabuse the public mind of an erroneous impression.[x] And it is contrary to the usages of Parliament to address the Crown upon matters which have not been made matters of compact between the sovereign and Parliament.[y]

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[t] Broom's Leg. Max. p. 63.

[u] Fischel, Eng. Const. p. 123.

[v] Book 2, section 205. And see Cox, Eng. Govt. pp. 408–416.

[w] Mir. of Parl. 1841, pp. 60, 78. And see Yonge, Life of Ld. Liverpool, v. 2, pp. 4, 5, 230–234. Hans. D. v. 217, pp. 1187, 1446. *Ib.* v. 228, p. 1495.

[x] Hans. D. v. 204, p. 866.

[y] Mr. Gladstone, Hans. D. v. 206, p. 323. And see similar precedents in Com. Papers, 1868–9, v. 35, p. 959.

Questions relating to the discharge of public duties by the sovereign are not irregular, but they must be couched in respectful and parliamentary language.[z]

The sovereign as a witness.

The curious question, whether the sovereign is examinable as a witness, was raised in 1818, in the Berkeley peerage case, in reference to the Prince Regent. The crown lawyers were unanimous in their opinion that the reigning monarch could not, by any mode, give evidence as a witness in a civil suit.[a] On the other hand, it has been asserted by Lord Campbell, 'that the sovereign, if so pleased, might be examined as a witness in any case, civil or criminal, but that he must be sworn; although there would be no temporal sanction to the oath,' inasmuch as he is the fountain of justice, and no wrong may be imputed to him.[b]

How far the king is bound in his private capacity to undertake municipal charges or offices is said to be doubtful. George III. was nominated churchwarden of St. Martin's, and the parishioners absurdly threatened to bring an action to compel him to assume the functions! He accepted the office, and got himself represented by deputy.[c]

Royal income.

The 'civil list' which is granted by Parliament for the support of the royal household, and for the maintenance of the dignity of the crown in England, has, ever since the accession of George III., been given in exchange for the hereditary revenues of the crown, which are all surrendered to Parliament. The civil list is settled anew upon the accession of every sovereign, and was fixed, in the case of Queen Victoria, at £385,000 per annum.[d] But more than one-third of this amount is allotted, by Act of Parliament, to defray salaries and superannuation allowances of the royal establishment. The sole remaining portions of the ancient estates of the

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[z] Hans. D. v. 192, p. 711.

[a] See the opinion, in Yonge's Life of Ld. Liverpool, v. 2, pp. 369-375.

[b] Lives of the Chancellors, v. 2, p. 527.

[c] Fischel, p. 135 *n.* And see Cox, Eng. Govt. p. 248 *n.*

[d] See May, Const. Hist. c. iv.

Civil list. crown which continue under the exclusive control of the royal family, are the Duchies of Lancaster and Cornwall. The former is a peculium of the Queen, although the chancellorship of the duchy is considered as a political office. Parliament is annually informed of the revenues of the duchy, though the nett receipts are paid into the Queen's privy purse. Under the improved management effected by the late Prince Consort, the estates of the duchy are becoming increasingly valuable.

The Duchy of Cornwall is the independent inheritance of the Prince of Wales, as heir-apparent, and only becomes the property of the crown when there is no heir-apparent of the throne.[e] Without denying the abstract right of Parliament to interfere with the disposal of the income arising from these royal duchies, it is not customary for the House of Commons to enter upon such enquiries.[f]

There is a moral liability laid upon Parliament to provide to an adequate extent for the honourable support of the junior branches of the royal family as they come to years of maturity, or are about to form matrimonial engagements, upon being invited to do so by message from the crown. This obligation has been invariably undertaken by Parliament in a loyal and liberal spirit.[g]

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[e] See the Crown Lands, by J. W. Lyndon (London, 1871). As to the distinction between lands which have been assigned by the state for the maintenance of the honour and dignity of the crown and estates which belong to the reigning sovereign, for the time being, as a private person, see Smith's Parl. Remb. 1862, p. 104. And see a discussion upon a Bill to grant to her Majesty the enjoyment of Claremont House during her life or pleasure. Hans. D. v. 182, pp. 960-965, 1075. *Ib.* v. 183, pp. 423, 921. And Act 29 & 30 Vic. c. 62, sec. 30. Com. Papers, 1874, v. 35. For a history of all the ancient crown revenues, see Com. Pap. 1868-9, v. 35, pp. 915-961.

[f] Hans. D. v. 206, p. 323; v. 210, pp. 284-299.

[g] Mr. Gladstone, Hans. D. v. 208, pp. 570-575, v. 217, p. 1338. For precedents of such grants, from 1688 to the present time, see Com. Pap. 1869-9, v. 35, p. 607, &c. For practice, in both Houses, on such messages, see Hans. D. v. 217, p. 1180. And see Amos, Fifty Years of the Eng. Const. p. 226.

There are some branches of the royal prerogative which may fitly engage our attention in the present chapter: those wherein the sovereign represents the state in its dealings with foreign nations. They will naturally admit of the following classification:—1. The right of declaring war and making peace. 2. Intercourse with foreign powers. 3. The right of making treaties. 4. Interference in the internal concerns of foreign nations. Under each head the constitutional limits of parliamentary interference with the prerogative in question will be briefly stated.

Prerogative in relation to foreign powers.

(1.) *The Right of declaring War and making Peace.*

The Constitution has vested this right exclusively in the crown, to be exercised according to the discretion of the sovereign, as he may judge the honour and interests of the nation to require. But this, like all other prerogatives, must be exercised by the advice and upon the responsibility of ministers, who are accountable to Parliament, and are liable to parliamentary censure or impeachment for the improper commencement, conduct, or conclusion of a war.[h]

Right of declaring war and making peace.

The previous consent of Parliament, either to the commencement of a war or the conclusion of a peace, is not formally required by the Constitution. The necessity for obtaining adequate supplies for the prosecution of a contest with any foreign power, and the control possessed by Parliament over the army and navy by means of the annual Mutiny Acts, coupled with the existence of ministerial responsibility, constitute a sufficiently powerful check against the improper use of this prerogative. Nevertheless, if the hostilities about to be entered into are likely to involve serious consequences, it would be the duty of ministers, before en-

How far subject to parliamentary control.

[h] Cox, Inst. Eng. Govt. 596. Amos, Fifty Years of the Eng. Const p. 370. Bowyer, Const. Law, 160. And see

gaging therein, to summon Parliament, to communicate to it the reasons for resorting to arms, and to ask for its advice and co-operation in carrying on the war.[i] If Parliament be in session at the time, it is customary for a royal message to be sent down, announcing the commencement of hostilities; but this form has not been invariably observed.[j]

A debate arose in the House of Commons in 1867 [k] upon the question of whether the conduct of the government in prosecuting the expedition for the forcible release of certain British subjects imprisoned in Abyssinia, without immediate appeal to Parliament, was constitutional. The 54th Clause of the Indian Government Act[l] expressly directs that—when any order to commence hostilities is sent to India the fact shall be communicated to Parliament within three months, if Parliament be sitting, or within one month after its next meeting. The China war (1857–1860) was 'begun and finished without the servants of the crown thinking fit to ask for a direct approval of their policy by Parliament,' although resolutions condemnatory of the war were proposed in both Houses and carried in the House of Commons.[m]

Interference of Parliament with this prerogative.

The crown, in communicating to Parliament the breaking out of hostilities, the existence of a state of war, or the commencement of negotiations for peace,[n] thereby invites an expression of opinion upon the same.

When negotiations for peace have failed, Parliament should be immediately informed thereof, in order that some action should be taken thereupon, if necessary.[o]

The advice tendered by Parliament may be unfavourable to the policy of ministers, and its indispensable

[i] Macaulay, in Hans. D. v. 84, p. 889. Palmerston, *Ib.* v. 144, p. 168, and v. 146, p. 1638. Earl Grey, *Ib.* v. 144, pp. 72, 2475. Disraeli, *Ib.* v. 218, p. 89. For precedents of parliamentary interference in questions of war and peace, see May, Const. Hist. v. 1, p. 458. Smith's Parl. Rememb. 1859, p. 95; 1860, p. 1.

[j] Com. Jour. Feb. 11, 1793. May 22, 1815. March 27, 1854. No message was sent upon the commencement of the China War; see Mir. of Parl. 1840, p. 2584. As regards the Persian War, see Parl. D. v. 146, p. 1577. And as to wars in India, *Ib.* 151, p. 1002, &c.

[k] Hans. D. v. 190, p. 178.

[l] 21 and 22 Vic. c. 106

[m] Hans. D. v. 161, p. 546.

[n] Com. Jour., Dec. 8, 1795, Oct. 29, 1801, Jan. 31, 1856.

[o] Hans. D. v. 138, pp. 105, 181, 560, 836, &c.

assistance withheld. Thus, the American war was brought to a close, against the will of the king, by the interposition of the House of Commons.

On March 4, 1782, the House resolved, that 'all those who should advise the continuance of the American war were to be considered as enemies to the king and country.' This brought the war to an end, despite the wishes and intentions of George III.[p]

In 1791, Mr. Pitt was obliged to abandon an intended war with Russia, which he deemed essential to the preservation of the balance of power in Europe, in deference to the adverse opinion of the House of Commons, expressed indirectly but unmistakably, after a royal message on the subject had been transmitted to Parliament.[q] After the escape of Napoleon from Elba, in 1815, a message was sent to both Houses by the prince regent, informing them of the measures undertaken by government for securing the peace of Europe. In the Commons, on April 7, in amendment to an address of thanks in answer to this message, Mr. Whitbread moved that the prince regent should be requested to exert his most strenuous endeavours to secure to the country the continuance of peace. This was negatived by a large majority. Again, on April 28, he moved an address to the prince regent, entreating him to take measures to prevent the renewal of war on the ground of the executive power of France being vested in any particular person. This also was opposed by government, and negatived by a large majority. On March 3, 1857, the House of Commons condemned the policy of the war with China. This occasioned a dissolution of Parliament, which resulted in favour of ministers.

Parliament is bound to sustain the crown in a foreign war.

But if the government, on their own responsibility, and with a knowledge of the international relations of the kingdom, which it would have been impolitic to have fully disclosed to Parliament beforehand, should

[p] May, Const. Hist. v. 1, p. 458.

[q] Stanhope's Pitt, v. 2, p. 113.

have found it necessary, in defence of the honour or the interests of the state, to engage in a foreign war, it becomes the duty of Parliament, in the first instance to afford the crown an adequate support. Thus, Mr Disraeli, the leader of the Opposition, upon the declaration of war with Russia, in 1854, said, 'If her Majesty sends a message to Parliament, and informs us that she has found it necessary to engage in war, I hold that it is not an occasion when we are to enter into the policy or impolicy of the advice by which her Majesty has been guided. It is our duty, under such circumstances to rally round the throne, and to take subsequent and constitutional occasions to question the policy of her Majesty's ministers, if it be not a proper one.'[r] In a succeeding chapter—when treating of the prerogative in regard to the direction and control of the army—various precedents will be adduced, pointing out the manner in which Parliament should exercise its constitutional right of inquiry into the prosecution of foreign wars;[s] and the case of the China war, above cited, is a memorable example of the condemnation by Parliament of a war which it regarded as unwise and inexpedient, while, at the same time, it did not refuse to furnish the means of bringing it to a successful issue.

On July 8, 1873, a resolution for an address to the Queen was agreed to by the House of Commons on division (against ministers), praying that the foreign secretary might be instructed to propose to foreign powers the establishment of a general and permanent system of international arbitration. On July 17, her Majesty's answer was reported, stating that 'the practice of closing controversies between nations by sub-

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[r] Hans. D. v. 132, p. 281. For similar remarks by Mr. Disraeli in reference to this prerogative, see *Ib.* v. 173, p. 97.

[s] See *post*, pp. 534–542.

mission to the impartial judgment of friends' had been hitherto advocated by the crown, and will be hereafter encouraged, 'with due regard to time and opportunity, when it shall seem likely to be attended with advantage.'

(2.) *Intercourse with Foreign Powers.*

Intercourse between the crown and foreign powers.

The sovereign is the constitutional representative of the nation in its intercourse with foreign powers. The transaction of affairs of state with other nations appertains exclusively to the executive government, which is always in existence, ready for the discharge of its functions, and constantly assisted by experienced advisers in the performance of its discretionary powers.

Secretary of state is the medium of communication.

The medium of communication between the sovereign of Great Britain and the accredited representatives of foreign nations is the secretary of state for foreign affairs.[t] It is his duty, in official interviews with foreign ministers, and by means of written despatches, to convey the views, opinions, and conclusions of the government upon matters arising out of the relations of the British Crown with other countries.

Information thereof to be given to Parliament

It is a necessary rule that the substance of all personal communications between the representatives of the British Crown and the ministers of any foreign country, upon matters of public concern, should be committed to writing, in order that a fair and complete record of the transactions between Great Britain and other states may be preserved in the Foreign Office, and, in due course, submitted to Parliament.[u] The English constitutional system requires that Parliament should be informed, from time to time, of everything which is necessary to explain the conduct and policy of government, whether at home or abroad,[v] in order that it may interpose with

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[t] See *ante*, p. 267.

[u] See Mr. Disraeli's speech in Hans. D. v. 157, p. 1179.

[v] Ld. Palmerston, *Ib.* v. 173, p. 1103. Earl Russell, *Ib.* v. 203, p. 1060.

Advantage of communicating to Parliament information on foreign policy.

advice, assistance, or remonstrance, as the interests of the nation may appear to demand.

In 1810 the House of Commons passed a resolution of censure upon the Earl of Chatham (the Master-General of the Ordnance and a cabinet minister), who had commanded a military expedition to the Scheldt, on account of his having presented to the king a secret report of the expedition, without communicating the same to his colleagues, or causing it to be considered as a public document. (See *ante*, p. 267.) It was justly contended, that if such a proceeding were permitted, it would strike at the root of ministerial responsibility.[w]

It is unquestionably of immense advantage to the country, that the diplomatic transactions and proceedings of government abroad should be freely communicated to Parliament, for thereby the foreign policy of the crown ordinarily receives the approbation of Parliament, and is sustained by the strength of an enlightened public opinion.[x] This in itself confers an additional weight to our policy and opinions abroad. On the other hand, it is notorious that the English system of giving publicity to information obtained by government, in regard to occurrences in foreign countries, is viewed with great disfavour on the Continent. A knowledge of the fact that all information procured by our foreign agents is liable to be made public, militates somewhat against their usefulness, and tends to place them occasionally in an embarrassing position. It induces towards them, moreover, a feeling of reserve on the part of the representatives of other governments; and necessitates that our ministers should resort, more than they would otherwise do, to the practice of private correspondence.[y]

But a certain amount of discretion must always be allowed to the government in respect to communicating

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[w] Parl. D. v. 16, p. 3**.

[x] See Earl of Clarendon, on the increasing power of public opinion over the foreign policy of the Government, Hans. D. v. 183, p. 572. And see Amos, Fifty Years of Eng. Const. p. 370.

[y] Rep. of Com. Com^e^. on the Diplomatic Service, Com. Pap. 1861, v. 6, pp. 75, 130, 344, 392.

or withholding documents and official correspondence which may be asked for by either House of Parliament. While it is necessary that Parliament should be informed of all matters which are essential to explain or defend the policy of government, it is equally necessary that a minister should be able, upon his own responsibility, to withhold from the public such information as he may judge could not be afforded without detriment to the public service. Ministers are sometimes obliged to give 'extracts' only from official papers, in certain cases; but Parliament is bound to receive what is communicated upon the faith and credit of the administration in whom their general confidence is reposed, unless they are prepared to question the personal integrity of ministers, or to pronounce a verdict of censure upon their public conduct.

Discretion in withholding what ought to be divulged.

'Extracts' given in certain cases.

A debate took place in the House of Commons on March 19, 1861, on a motion for a committee to consider the discrepancies between the copies of certain correspondence relating to Affghanistan, which was presented to Parliament in 1839, and again (in a different shape) in 1858; and to report thereon with a view to secure that all copies of documents presented to the House shall give a true representation of the originals. After explanations on the part of Lord Palmerston, against whose official conduct the motion was directed, it was negatived.[z]

Thus, it is generally inexpedient, and highly impolitic, to communicate to Parliament papers concerning diplomatic negotiations which are still pending;[a] and 'nothing is more prejudicial to the action and efficiency of the diplomatic service than the perpetual motions for the production of papers, which are made by a certain

Papers concerning pending negotiations.

[z] But see Smith's Parl. Rememb. 1861, p. 45. And Louis Blanc's Letters on England, 2nd S. v. 1, p. 206. See also the case of the China Despatches, noticed in Smith's Parl. Rememb. 1860, p. 35.

[a] See *post*, p. 370.

class of politicians,' who insist upon the fullest information on questions of foreign policy, at unseasonable times.[b]

Sometimes, however, the government, in the exercise of their own discretion, have laid before Parliament papers in regard to disputes with foreign nations, whilst the negotiations were still pending, expressly in order that the opinion of Parliament might be declared, so as to influence the course of events.[c] But in 1860 a motion in the House of Commons, for the production of a copy of a despatch received from abroad (upon a subject on which negotiations were pending), and before it had been answered, was successfully opposed by the foreign secretary (Lord John Russell), on the ground that 'such a course would not only be contrary to precedent, but contrary to every principle recognised by the Constitution:' it 'would be like inviting the House to dictate the answer.'[d]

Count Walewski's despatch in 1858.

In 1858, a despatch was received from Count Walewski, foreign secretary to the French Government, referring to a recent attempt upon the life of the French emperor, which had been plotted in England, and angrily remonstrating against the alleged impunity of assassins in England. Instead of replying to this despatch, the government laid it before Parliament, and made it the foundation of a Bill, which they introduced into the House of Commons, to amend the law concerning conspiracy to murder. But the Commons, indignant at the imputations contained in this despatch, and at the conduct of the ministry in relation thereto, rejected the bill upon its second reading, by the adoption of a resolution, expressing their regret that the government, 'previously to inviting the House to amend the law of conspiracy, had not felt it to be their duty to make some reply' to Count Walewski's despatch.[e] This resolution led to a change of ministry.

In 1872, as a deviation from the general rule, ministers consented to lay before Parliament 'the English case' under the treaty of Washington, the American case having been widely circulated by

[b] Rep. Com. Diplomatic Service, Com. Pap. 1861, v. 6, p. 344.

[c] Mr. Disraeli, citing case of Crimean War, in 1854. Hans. D. v. 173, p. 863.

[d] Hans. D. v. 157, p. 1177. And see *ante*, p. 441.

[e] *Ib.* v. 148, p. 1758.

the American Government. Otherwise, 'our own case would not be presented to Parliament because it is a document prepared for a process which has yet to come on, and it is for the consideration of the arbitrators,' &c.[f]

Drafts of despatches.

It is a common practice, in order to save time, to send on a despatch, intended for presentation to a foreign court, by the British minister abroad, with instructions to withhold the delivery thereof until all the parties concerned had agreed upon it. If afterwards the despatch is not agreed to, it is simply cancelled. It then has no existence; and government have uniformly refused to communicate to Parliament the original draft of any such despatch.[g] It is likewise contrary to diplomatic usage to communicate to Parliament, or to the public, the answer to a despatch, until it has been received by the power to which it has been addressed.[h]

Private and confidential correspondence.

Any attempt to coerce the government into producing to Parliament all the papers they may possess upon a matter of foreign policy, without regard to their being confidential, or unsuitable for general publication, could only result in compelling the agents of government to have recourse to 'private correspondence' for the communication of everything but mere ordinary information. This would occasion not only immediate public loss, but also permanent injury to the state; for when one administration succeeded another, it would be unable to discover, amongst the official records of the public departments, the real grounds of action, and motives for decisions, upon great public questions. In communications between the Imperial Government and its agents abroad, private and confidential letters are necessarily frequently made use of. These letters refer to circumstances not sufficiently certain, or sufficiently important, to be placed in the formal shape of a despatch; or it

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[f] Mr. Gladstone, *Ib.* v. 200, p. 208. 540. (Layard), *Ib.* v. 175, p. 662.
[g] Ld. Palmerston, *Ib.* v. 173, p. [h] *Ib.* v. 234, p. 319.

may be that they communicate circumstances which have been learnt from conversations, or otherwise express opinions which it would be impossible to lay before Parliament without placing the writer in a position that would exclude him thereafter from all means of information which it is essential he should obtain. Such letters it is the duty of the foreign secretary to receive, and it is equally his duty not to lay them before the House.[i]

Etiquette towards foreign sovereigns.

It is contrary to the etiquette observed towards sovereign princes to communicate to Parliament autograph letters addressed by them to the monarch of Great Britain. The practice is, for the secretary of state to refer to the substance of such letters in an official despatch, acknowledging the receipt thereof, whereby an official record is preserved of their contents.[j] Nor is it proper, or consistent with practice, to lay before Parliament a letter from a foreign monarch to one of his ministers of state, even though a copy of the same may have been transmitted to the Foreign Office by our own ambassador.[k]

It is also unusual to lay before Parliament any communications between ambassadors and ministers abroad and the sovereign to whom they are accredited.

An ambassador is understood, in monarchical states, to be on equal terms with the sovereign to whom he is accredited, and therefore at liberty to appeal, by word of mouth, from the administration of a country to their master. An envoy is presented to the sovereign, but transacts his diplomatic business with the minister alone.

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[i] Ld. Palmerston, Hans. D. v. 157, p. 1182. And see Walrond's Letters of Ld. Elgin, p. 79. For discussions concerning the publication of 'private and confidential letters' addressed by Sir D. Lange to the foreign secretary, see Hans. D. v. 227, pp. 1426–1436, 1500. As to the use of private correspondence in communications between the Home and East Indian Governments, and especially with the Indian Frontier States, see *Ib.* v. 234, p. 1820. For further particulars in regard to the practice of private correspondence between the foreign secretary and the diplomatic servants of the crown, see *post*, v. 2, on 'Departments of State' (the Secretary of State for Foreign Affairs).

[j] Mr. Canning, in Parl. D. v. 36, p. 187.

[k] Hans. D. v. 184, p. 381.

A chargé d'affaires has no recognised claim to approach the throne, except by favour.[l]

Such documents are regarded as 'confidential' for the obvious reason that their production 'might lead to serious consequences.'[m]

Appointment of ambassadors.

The sovereign, considered as the representative of her people, has the exclusive right of sending ambassadors to foreign states, and receiving ambassadors at home.[n] This prerogative should be regarded as inviolate, and should not be interfered with by either House of Parliament,—except in cases of manifest corruption or abuse; else the responsibility for its faithful exercise by the minister of state who is properly accountable for the same would be impaired, if not destroyed.

Not to be controlled by Parliament.

In 1814, the Right Hon. George Canning was appointed ambassador extraordinary at the Court of Lisbon, for the purpose of congratulating the Prince of Brazil upon his return to Portugal. The salary and allowances to Mr. Canning were on the scale ordinarily allowed to such functionaries; but a few months previously, it appears that the foreign secretary had written to the resident minister at Lisbon, requiring him, as a matter of economy, to reduce the expenses of the mission. The subsequent appointment of Mr. Canning, at a greatly increased rate of expenditure, led to the imputation that he owed his nomination to corrupt influences, and that his appointment was, in fact, 'a pecuniary and profitable party job.' Accordingly, on May 6, 1817, after Mr. Canning had returned home, Mr. Lambton moved in the House of Commons a series of resolutions reciting the particulars of the case, and asserting the appointment to have been inconsistent with the previous declarations of government in regard to this mission, uncalled for, and resulting in an 'unnecessary and unjustifiable waste of the public money.' The foreign secretary (Lord Castlereagh) defended the conduct of the government, and afterwards Mr. Canning himself gave full and satisfactory explanations, which entirely exonerated all parties from corrupt or improper conduct in the matter. Nevertheless, the motion was pressed to a division, but it was negatived by a large majority.[o]

Upon the accession to office of Sir Robert Peel, in 1835, he

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[l] Ld. Stratford de Redcliffe, in The 19th Cen. v. 2, p. 476.

[m] Ld. John Russell, Hans. D. v. 131, p. 702.

[n] Bowyer, Const. Law, pp. 157, 158.

[o] Parl. D. v. 36, pp. 160-234.

selected the Marquis of Londonderry to be ambassador at St. Petersburg. This choice was unpopular in the House of Commons, and on March 13, 1835, a motion was made for an address 'for a copy of the appointment, if any, of an ambassador to St. Petersburg, together with a return of the salary and emoluments attached thereto.' No vote was taken on this motion, it being stated that the appointment, although intended, had not yet been made. But the adverse feeling towards Lord Londonderry on the part of the House of Commons was so very apparent, that his lordship, without communicating with any member of the government, declared in the House of Lords that he would not accept the mission.[p] Both the Duke of Wellington and Lord John Russell protested against the unconstitutional invasion by the House of Commons of the royal prerogative;[q] and Sir R. Peel, who had announced his intention of adhering to the choice he had made,[r] afterwards stated that he had been no party to Lord Londonderry's withdrawal, and that had the address passed, he should have resigned office.[s]

Houses of Parliament may not communicate directly with foreign powers.

It would be a manifest breach of this prerogative and of international courtesy for either House of Parliament to communicate directly with any foreign prince or power. All such communications should be made officially through the government, and by a responsible minister of the British Crown.[t]

In 1836, the French Government made a valuable present of books to the libraries of the Houses of Lords and Commons. The fact was duly reported to each House, by their respective library committees. In the House of Lords, a resolution, expressing grateful satisfaction for this donation, was adopted; but it was admitted that no precedent existed to warrant the House in transmitting the same direct to the French Chamber of Peers After a short discussion on the point of form, it was agreed that the resolution should be forwarded through the secretary of state for foreign affairs, without any further action on the part of the House.[u] It was decided in the Commons, that, after the session, their Speaker should make some arrangements for conveying an expression of thanks for this donation to the French authorities, without the adoption by the House of any formal vote thereupon.[v]

And in 1868 a resolution was agreed to by the House of Com-

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[p] Mir. of Parl. 1835, p. 350.
[q] *Ib.* pp. 350, 358.
[r] *Ib.* p. 335.
[s] *Ib.* 1841, p. 1834. Peel's Mem. v. 2, p. 88.
[t] Hans. D. v. 206, pp. 62, 64.
[u] Mir. of Parl. 1836, p. 1936.
[v] *Ib.* p. 2836.

mons (July 31) accepting, 'with much gratification,' a certain volume presented by the Congress of the United States, and directing that a copy of this resolution be forwarded to the American secretary of state, with a request that he will communicate the same to Congress.

Upon the occasion of the successes of the allied armies of England and France, during the Crimean war, in 1854, the thanks of Parliament were voted to the French commander and his army, 'for their gallant and successful co-operation' with our troops, and the English commander, Lord Raglan, was desired to convey to them this resolution. But this vote was admitted by Lord John Russell to be 'unusual, and perhaps unprecedented;' and grave doubts were expressed by Earl Derby, whether such a proceeding on the part of the House towards the troops of a foreign power was not irregular and unbecoming. Nevertheless, the unanimity of feeling which generally prevailed at the time towards our French ally caused the point of form to be overruled.[w]

On May 1, 1865, addresses to the Queen were voted in both Houses of Parliament, to convey to her Majesty the expression of the deep sorrow and indignation with which the intelligence of the assassination of Mr. Lincoln, President of the United States, had been received, and praying her Majesty to communicate the abhorrence of the House, and their sympathy with the government and people of the United States, upon this occasion, to the American Government. These addresses were agreed to, *nemine dissentiente*; although, in the House of Lords, Earl Derby took exception upon formal grounds, and suggested that the more regular course would have been 'simply to move a resolution of this, in conjunction with the other House of Parliament,' expressing the feelings proposed to be embodied in the address to the crown. No reply was made by the mover of the address (Earl Russell, the foreign secretary) to this point.[x]

And ought to receive no communications from foreign princes.

On June 30, and July 10 and 13, 1863, a singular and unprecedented occurrence took place in the House of Commons. Two members, Messrs. Roebuck and Lindsay, in the course of debate upon the expediency of recognising the Southern American Confederacy, communicated to the House an opinion of the Emperor of the French upon the subject, which his Imperial Majesty, they stated, had authorised them to make known to the House of Commons. This proceeding gave rise to a very lively discussion, and elicited from Lord Palmerston (the premier) some very pertinent remarks. 'The British Parliament,' he said, 'is in no relation to, has no intercourse with, no official knowledge of, any sovereign of any foreign

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[w] Hans. D. v. 136, pp. 329, 390. [x] *Ib.* v. 178, p. 1223.

country. Therefore it is no part of our functions to receive communications from the sovereign or government of any foreign state, unless such communications are made by the responsible minister of the crown, in consequence of official communications held by order of a foreign government with the British Government.' After further observations on this point, his lordship declared that he thought it right to place on record, so far as could be done by a statement in the House, that the proceeding in question was 'utterly irregular, and ought never to be drawn into precedent.'[y]

Houses of Parliament can only communicate with other legislative bodies through the imperial executive.

The principle involved in the foregoing cases admits, moreover, of a more extended application, and forbids of any formal communications between the Houses of Lords and Commons and other legislatures in the British empire, except through the medium of the executive officers of the Imperial Government; and likewise of any official communication between a colonial and a foreign government, except through the same channel.

Thus, on March 1, 1855, inquiry was made of ministers, in the House of Lords, whether they intended to propose that the thanks of Parliament should be given to the several colonial legislatures who had liberally evinced their sympathy with the mother country during the Russian war, by large contributions to the Patriotic Fund. It was replied, that no precedent existed for such a communication, and that 'it was a matter of grave doubt whether a precedent should be now set, recognising an intercommunication between the Imperial Parliament and the legislatures of the colonies in matters pertaining to the crown, which would set the crown altogether aside.' In this view all the leading statesmen of the House concurred.[z]

In 1878, the colonial government of New Zealand, being desirous of conveying the thanks of the colony to the Government of the United States of America, for a generous gift of salmon ova to be distributed to the different rivers in the colony, communicated the same through the Governor, to her Majesty's secretary of state for the colonies 'in the hope that her Majesty's Government will permit a communication to be made to the Government of the United States' to this effect.[a] A similar course was taken by the two Houses

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[y] Hans. D. v. 172, p. 669.

[z] *Ib.* v. 136, pp. 2073–2084. See also the course taken by the H. of Lords, in 1856, upon the occasion of the gift by the widow of the late Ld. Chanc. Truro of his collection of law books, as a donation to the library. *Ib.* v. 141, p. 133. Lords' Jour. 1856, pp. 74, 95.

[a] New Zealand Papers, 1878, A. 1, p. 12.

of the several Australian Parliaments in expressing their sympathy and condolence upon the death of President Garfield. These resolutions were ordered to be sent by telegraph.[b] The United States Government promptly responded by telegram addressed by their Secretary of State to the United States Minister in London. He sent the reply to the Foreign Office, which communicated it to the Colonial Office, and the secretary for the colonies forwarded it to the several governors in Australia.[c]

(3.) *The Right of making Treaties.*

Rights of the Sovereign in making treaties.

It is a peculiar function of sovereignty to make treaties, leagues, and alliances with foreign states or princes; and by the law of nations it is essential to the validity of a treaty that it be made by the sovereign power, for then it binds the whole community. In the British empire this sovereign power is vested exclusively in the crown, acting under the advice of its responsible ministers.

The question of conferring upon the colonies a right to make treaties in certain cases, *e.g.*, the extradition of offenders and reciprocal tariff arrangements, has been recently discussed between the imperial and colonial authorities.[d]

Whatever engagements or contracts the sovereign enters into, no other power within the kingdom can legally delay, resist, or annul; although the king's ministers are responsible to Parliament for their participation in the conclusion of any treaty derogatory to the honour and interests of the nation.[e]

A treaty is a promise or engagement entered into by the highest authorities in the states concerned to do certain things. But it is an obligation of honour and good faith. No penalty is provided for its violation;

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[b] Tasmania Leg. Coun. Vote, Sept. 29, 1881.

[c] *Ib.* July 12, 1882.

[d] See Sess. Pap. of Victoria, 1871. Despatches to and from the Governor of New Zealand in 1872, in New Zealand Pap. See also Am. Law Mag. v. 7, p. 186.

[e] Bowyer, Const. Law, p. 160. 1 Blackstone, c. vii. Ld. Palmerston, Hans. D. v. 174, p. 787. Ld. Stanley, *Ib.* v. 187, p. 1916. See debate in H. of Lords on the interpretation of the 'collective guarantee' in the treaty of Luxemburg, Hans. D. v. 188, p. 966.

and there is no existing tribunal, or external authority, which can enforce the obligations of a treaty.[f]

But it was decided by the judge of the Admiralty Court, on March 15, 1879, that where a right of a British subject has been recognised by Parliament, the crown cannot cede or extinguish that right by a public treaty without the sanction of the legislature; and it is not competent to the crown, without the authority of Parliament, to clothe a foreign mail packet with the immunity of a foreign ship of war, so as to deprive a British subject of the right to proceed against her.[g] But on February 27, 1880, this decision was reversed by the Court of Appeal, on the ground that the immunity of this ship from civil process was incident to her public character and ownership.[h]

Power of Parliament in respect to treaties.

The constitutional power appertaining to Parliament in respect to treaties is limited. It does not require their formal sanction or ratification by Parliament, as a condition of their validity.[i] The proper jurisdiction of Parliament in such matters may be thus defined: First, it has the right to give or withhold its sanction to those parts of a treaty that require a legislative enactment to give it force and effect; as, for example, when it provides for an alteration in the criminal or municipal law, or for the extradition of criminals, or proposes to change existing tariffs or commercial regulations.[j] Secondly, either House has the right to express to the crown, by means of an address, its opinion in regard to any treaty, or part of a treaty, that has been laid before

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[f] Earl Derby, Hans. D. v. 230, p. 1462. Ld. Hammond, *Ib.* p. 1803. H. Richard, M.P., on the Obligation of Treaties in Law Mag. 4th S. v. 3, p. 91. And a paper on Treaties of Guarantee, *Ib.* v. 6, p. 215.

[g] Case of 'Le Parlement Belge,' 4 L. R. Prob. Div. p. 129. Law Mag. 4th S. v. 4, p. 257.

[h] 42 L. T. Rep. N.S. p. 273.

[i] Hans. D. v. 156, p. 1361. *Ib.* v. 201, p. 174. Earl Derby's evid. before Com^e. on Diplom. Service, Com. Pap. 1870, v. 7, p. 468.

[j] See cases in Hertslet's Treaties, v. 9, p. 1064, &c. And see Forsyth, Const. Law, p. 369.

Parliament.[k] Thirdly, it is in the power of either House, if it disapproves of a convention or treaty, to visit the ministers of the crown who are responsible for the same with censure or impeachment, as the case may be.[l]

If a treaty requires legislative action, in order to carry it out, it should be subjected to the fullest discussion in Parliament, and especially in the House of Commons, with a view to enable the government to promote effectually the important interests at stake, in their proposed alterations in the foreign policy of the nation.[m] But while Parliament may refuse to agree to measures submitted to them for the purpose of giving effect to any treaty, they have no power to change or modify, in any way, a treaty itself.[n]

Until of late years, it was not usual to lay before Parliament treaties prior to their ratification by the governments concerned. A contrary practice has recently prevailed in several instances.[o]

In 1865, the government submitted to the House of Commons a 'Sugar Duties and Drawback Bill,' the object of which was, 'to give effect to a treaty which had not yet been ratified, and therefore could not be presented to the House in the usual form, by command of her Majesty; but for the information of the House, as the treaty required legislation, a copy had been presented as a return from the Treasury.'[p]

In 1870, a treaty of neutrality with Belgium was for special

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[k] Mr. Pitt's dictum, Smith's Parl. Rememb. 1860, p. 33. Ld. Aberdeen's motion in H. of Lords, Jan. 26, 1832, for an address to the king, to cause certain alterations to be made in the project of a treaty respecting Holland, which had been made public, with a view to the honour of Great Britain and the just claims of Holland. (Mir. of Parl. 1831-2, pp. 310, 2823.) Mr. B. Cochrane's motion, in House of Commons, on July 13, 1860, in regard to an article in the treaty with China, respecting the residence of a British Plenipotentiary at Pekin; and Ld. John Russell's observations thereupon. Hans. D. v. 159, p. 1886.

[l] Mr. Gladstone, in Hans. D. v. 156, p. 1380. Ld. H. Petty's motion of censure in regard to the Convention of Cintra. Parl. D. Feb. 21, 1809. For older cases, see Cox, Inst. Eng. Govt. p. 590. And *ante*, p. 106.

[m] Hans. D. v. 156, pp. 1256, 1326.

[n] Mr. Gladstone, Hans. D. v. 71, p. 548.

[o] Hans. D. v. 206, p. 1103.

[p] Chan. of the Excheq. Hans. D. v. 180, p. 280.

reasons informally communicated to both Houses of Parliament on the day of prorogation, although its formal ratification had not been completed.[q] The same course was taken with regard to the treaty of Washington in 1871,[r] and in the case of the French Commercial Treaty in 1873.[s]

Right of government to withhold information.

Nevertheless, the prerogative of the crown in this particular has not been abandoned, and it is still in the discretion of government to refrain from communicating any treaty, especially a treaty of peace, to either House of Parliament until after it has been ratified.[t]

Treaties between foreign powers, to which Great Britain is not a party, are not communicated to Parliament; although copies thereof may be in the possession of the British Government.[u]

On March 3, 1873, Lord Campbell moved that the House of Lords should address her Majesty, praying that all treaties or conventions by which disputed questions between Great Britain and a foreign power are referred to arbitration may be laid upon the table of both Houses six weeks before they are definitively ratified. But the leaders of the government and of the Opposition objected to this motion; it was negatived without a division. On the following day, a motion in the House of Commons, that all treaties with foreign powers ought to be made conditionally on the approval of Parliament, was negatived without a division.

After the treaty of Washington of 1871 had been signed, but before its ratification, the government was induced to communicate it to Parliament. Whereupon, on June 12, Earl Russell moved, in the House of Lords, an address to her Majesty praying that a certain novel principle in the said treaty for the settlement of the *Alabama* claims might not be sanctioned. Ministers, while anxious for discussion in Parliament upon the treaty, deprecated the adoption of the proposed motion. The Earl of Derby (a leading Opposition peer) was of the same opinion. He pointed out that the agreement of the House of Lords to the resolution would not lead to the breaking off of the treaty, unless concurred in by the House of Commons. And that such a question, being vital to the existence of a ministry, would be treated as one of confidence by the House of Commons, and not

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[q] Chan. of the Excheq. Hans. D, v. 203, pp. 1759, 1790.

[r] *Ib.* v. 206, p. 1108.

[s] *Ib.* v. 214, p. 173.

[t] Mr. Gladstone, Hans. D. v. 214, p. 470.

[u] Mir. of Parl. 1834, p. 2858.

determined upon the merits of the case. Accordingly, after full debate, the motion was negatived without a division.[v]

On June 29 Lord Oranmore moved an address to the Queen conveying the deep regret felt by the House of Lords at her Majesty's having been advised to sign a treaty with the United States which was unbecoming the honour and dignity of this country. But the motion was negatived without a division.[w]

Alleged violations of treaties

It is unnecessary and inexpedient for the House of Commons to interfere in any way, or declare its opinion, on any matter of alleged violation of treaty, or which concerns the foreign relations of Great Britain with other countries; unless at the instigation of the executive government, and with a view to powers or opinions sought for by the executive; as matters affecting our relations with foreign countries are prerogative.[x] But questions may be put to the administration in Parliament, in reference to alleged infractions of treaties by foreign powers, and for the purpose of directing the attention of government thereto.[y]

Treaties still pending.

Moreover, 'it is neither regular to ask, nor is it convenient to answer, questions relative to treaties which are yet pending.'[z] The initiation of a foreign policy and the conducting of negotiations with foreign powers appertains exclusively to the executive government, who are responsible for the course and issue of the same; and should not be interfered with by Parliament, who necessarily can only possess imperfect information upon the subject, either by advice or by vote.[a] So long as

[v] Hans. D. v. 206, pp. 1823–1901.

[w] *Ib.* v. 207, p. 729.

[x] Lord John Russell, Hans. D. (3) v. 90, pp. 890, 891. See the discussion, in the H. of Commons, on June 28, 1861, on an abstract resolution proposed in reference to the Garibaldi fund, for the liberation of Italy. And on the motion in the House, on April 28, 1864, to resolve that certain instructions issued to a colonial governor, in regard to the observance of neutrality in the American Civil War, were 'at variance with the principles of international law.'

[y] See *Ib.* v. 157, pp. 749, 757; v. 158, pp. 1109, 1120.

[z] Mir. of Parl. 1841, p. 1032.

[a] British guarantee in the Luxemburg case, Hans. D. v. 187, p. 259. Treaty of Tien-tsin, *Ib.* v. 191, p. 1147. Mr. Bagehot, in his Eng. Const. ed. 1872, urges the expediency of some parliamentary control over the making of treaties, as by requiring that they be laid upon the table

Parliament is satisfied with the general principles upon which negotiations are being conducted, and approves of the general policy of the government, it should abstain from all interference with pending negotiations.[b]

Parliament ought not to legislate in matters proper for negotiation.

So strictly is this rule observed, that, in 1839, a Bill introduced by government for the Suppression of the Portuguese Slave Trade was rejected by the House of Lords, at the instigation of the Duke of Wellington, Lord Lyndhurst, and other eminent statesmen, expressly on the ground that Parliament ought not to be called upon to act in a matter which should properly be effected by negotiation and by the action of the executive government on their sole responsibility. After the rejection of the Bill, an address to the crown was adopted by the House of Lords, urging negotiations with foreign powers to suppress the traffic in slaves, and the adoption of other measures by government to that end, especially as regards the Portuguese slave trade, and giving assurances of the readiness of the House to concur with the Commons in whatever measure might be necessary to bring about such a desirable result. To this address a suitable reply was given by the crown. At the same time, the ministry introduced another Bill on the subject, which was free from the principal objections pointed out in the former measure. The Duke of Wellington, however, was still dissatisfied, and adhered to his opinion that the objects intended ought to be effected by order in council, without the intervention of Parliament. In its progress through the Lords, the Bill underwent some important alterations, rendering it more comformable to constitutional law and usage; and it was finally agreed to by both Houses.[c]

On June 4, 1872, Earl Russell moved that the House of Lords do address her Majesty, praying that proceedings may be stayed before the arbitrators at Geneva, under the Treaty of Washington, until the indirect claims, included in the American case, shall have been withdrawn; inasmuch as it is understood by her Majesty's government that these claims do not come within the province of

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of both Houses certain days before they become valid, pp. xlv.-xlix. But see Mr. Gladstone thereon, Hans. D. v. 210, p. 325.

[b] See the speeches of Mr. Disraeli and of Ld. Palmerston, in Hans. D. v. 175, pp. 1279, 1286. And of Earls Derby and Russell, *Ib.* pp. 1924, 1928. Papers regarding pending negotiations with foreign powers are only communicated to Parliament at the discretion of the Crown, and so far as they can be produced without public injury or inconvenience; see Mir. of Parl. 1830, p. 671; 1840, pp. 2047, 2049; 1841, p. 1507. Hans. D. v. 187, p. 1492 Confidential communications from foreign powers are never laid before Parliament without previous communication with the powers concerned. Disraeli, *Ib.* v. 230, p. 885. And see *ante*, p. 357.

[c] See Parl. D. 1839, *passim.* Ann. Reg. 1839, pp. 242-255.

the arbitrators. Earl Granville (foreign secretary) declared that such an address would be considered as a vote of censure. On June 6, upon receiving certain satisfactory assurances from government, Earl Russell withdrew his motion. On June 11, Lord Oranmore moved a similar address, which was put and negatived without debate or division.

Result of negotiations to be made known to Parliament.

After the conclusion of important negotiations with the representatives of any foreign state or states, it is usual for the government to communicate the result to Parliament, and to declare what is the course which the government propose to take in regard to the questions involved therein.[d] If either House should be of opinion that the government has failed in its duty in any respect, it is competent for them to take any line of conduct they may think proper, in order to make known to the crown their opinions upon the subject.[e] For, while the initiation of a foreign policy is the prerogative of the crown, to be exercised under the responsibility of constitutional ministers, it is the duty of Parliament, when the result of the negotiations conducted by ministers has been communicated to them, to criticise, support, or condemn that policy, as they may deem the interests of the nation shall require.[f]

Invasion of Denmark in 1864.

Thus, on July 4, 1864, after the protocols of the conference held in London, in the summer of 1864, between the representatives of European powers, to consider of the dissensions between Denmark and Germany, had been laid before Parliament, Mr. Disraeli moved in the House of Commons a vote of censure upon ministers, in the shape of an address to the Queen, to represent that the course pursued by the government had failed to maintain their avowed policy of upholding the integrity and independence of Denmark, had lowered the just influence of this country in the counsels of Europe, and thereby diminished the securities for peace. An amendment, to declare that the independence of Denmark and the security of its possessions in Schleswig-Holstein ought to be guaranteed, was negatived without a division. Another amendment, approving of the conduct of government in abstaining from armed interference

[d] Mr. Gladstone, Hans. D. v. 199, p. 325.

[e] Earl Russell, *Ib.* v. 176, p. 323.

[f] Mr. Disraeli, *Ib.* p. 749.

in the war, for the defence of Denmark, was put, and agreed to. On July 8, a similar vote of censure was proposed in the House of Lords; an amendment, to modify the terms thereof, was put, and negatived, and the main question was agreed to. It is noteworthy that this vote was carried by means of proxies, for, of the peers present, there were 123 non-contents to 119 contents; but, by the aid of proxies, this decision was reversed, and the total majority in favour of the vote of censure was 9, there being 177 in favour and 168 against it.[g]

Whether the crown may dispossess itself of territory, without assent of Parliament.

On March 30, 1871, the course taken by government in accepting a proposal for the assembling of a conference in London to revise the obligations imposed by the Treaty of Paris, of 1856, was made the subject of a motion of censure in the House of Commons, which motion, after a long debate, was negatived, without a division. The question whether the crown has power by its prerogative to cede British territory to a foreign state, except under a treaty of peace, or to dispossess itself of its sovereignty over any portion of its dominions, without the assent of Parliament, has been frequently discussed, and still remains doubtful.[h] This question, so far as regards the right of the crown to surrender to a foreign state a part of its territory, was supposed to have been settled in the affirmative, on the authority of Lord Chancellor Thurlow, but Lord Campbell disputed the correctness of the dictum of his predecessor.[i] The point again arose in 1863 upon the cession of the Ionian Islands to Greece, when it was argued by Earl Grey, in favour of the crown;[j] also by

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[g] Hans. D. v. 176, p. 1190.

[h] See a digest of cases and opinions on the subject in Forsyth, Const. Law, pp. 182-186. And the debate in H. of Commons, in 1854, in relation to the issue of a royal proclamation abandoning the sovereignty of the crown over the Orange River territory, Hans. D. v. 133, pp. 53-87. And see Amos, Fifty Years Eng. Const. p. 413. Also observations in both Houses in regard to the proposed transfer of the Gambia Settlement to France. Hans. D. v. 201, p. 1843; v. 203, pp. 339, 351; v. 206, p. 153; v. 226, pp. 444; v. 227, p. 374; v. 228, p. 264.

[i] Campbell's Chanc. v. 5, pp. 555, 556 *n*. Smith's Parl. Rememb. 1863, pp. 13, 141.

[j] Hans. D. v. 169, p. 57.

Lord Palmerston, and Sir R. Palmer (Solicitor-General), to a similar effect, with an exception in the case of newly-discovered territories which had been settled by British subjects, when the laws of England having been introduced therein, it was contended that the cession could not take place without the consent of Parliament. Or, in the case of conquered or ceded countries, if Parliament had legislated concerning them, Sir Roundell Palmer considered that the concurrence of Parliament might be necessary to their relinquishment:[k] an opinion which was considered by the Privy Council, without being fully decided, in 1876.[l]

Consent of Parliament not necessary for acquisition of territory.

The consent of Parliament is not necessary to the acquisition, by the crown, of additional territory, from foreign powers; provided the same is not obtained by purchase.[m]

On June 25, 1872, it was moved in the House of Commons that an address be presented to her Majesty that she would be pleased to consider the propriety of establishing a protectorate at Fiji, or of annexing those islands, with the consent of the inhabitants. Being opposed by ministers, the motion was negatived on division. The question was again mooted in the House, with a similar result, on June 13, 1873. On August 4, 1874, whilst negotiations were pending for the annexation of the Fiji Islands to the British Empire, a private member of the House of Commons moved a resolution to express approval of the same. But it was objected to, as tending to diminish the responsibility of the government, and to assume an unjustifiable responsibility on the part of the House of Commons, and the motion was negatived.

(4). *Interference in the Internal Concerns of Foreign Nations.*

Interference in concerns of foreign nations.

The crown, acting through the secretary of state for foreign affairs, is sometimes called upon to express

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[k] Hans. D. v. 169, pp. 230, 1807; and see *Ib.* v. 174, p. 378.

[l] Damodhar Gordhan *v.* Deoram Kangi. 1 L. R. App. Cases, p. 332; and Law Rev. v. 4, 4th S. p. 277.

[m] Dutch Guinea, Hans. D. v. 205. p. 657; v. 211, p. 287. Diamond Fields in S. Africa, *Ib.* v. 207, p. 1631. Acquisition of Fiji, *Ib.* v. 226, p. 571. And see Amos, Fifty Years of Eng. Const. p. 403.

Intervention in foreign affairs.

its opinions in regard to the conduct of other powers, in matters of internal or domestic concern. The interests of British subjects resident in foreign parts, or engaged in commercial transactions with foreign citizens, may require the interposition of the crown on their behalf; or a particular line of policy adopted by a foreign state towards its own subjects, or towards a neighbouring state, may be viewed by the British government as contrary to recognised principles of humanity, or of natural right, or as being likely to occasion a disturbance of the peace of nations. Under such circumstances, the crown is warranted by international usage in offering friendly advice or remonstrance to a foreign government.[n] But great delicacy is necessary in all such acts of intervention, lest they should fail of their intended effect, and irritate instead of conciliating;[o] thereby weakening the moral strength of the crown in its foreign relations, or necessitating a resort to arms.

'All public writers have declared that a nation has the right to settle its own form of government, provided it does not injure other nations in its mode of doing so, just as every householder may regulate his own house, provided he does not cause a nuisance to the neighbourhood; but if one nation attacks another, all nations are at liberty to judge whether their interests and the general independence are affected thereby. Thus the first kind of intervention should, as a rule, be forbidden and avoided.' Of late years, the leading powers of Europe have abstained, as a general principle, from such intervention. 'But the case would be quite different if, when a great power attacks a small independent state, with a view to conquest, other powers were as a rule to remain quiescent.' 'It does not follow, however, that in every case of invasion with a view

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[n] See a number of instances, cited by Ld. Palmerston, wherein the Brit. Government 'have interfered with great success in the affairs of other countries, and with great benefit to the countries concerned,' Hans. D. v. 175, p. 532. *Ib.* v. 235, p. 402.

[o] Ld. Palmerston, when foreign secretary, gave frequent offence to foreign governments, and even to his own government. Thus, in 1848, an irritating and ill-judged despatch, which greatly irritated the Spanish Government, and gave rise to much debate in both Houses of Parliament. Martin's Pr. Consort, v. 2, p. 65. And see *Ib.* pp. 278, 301.

to interference in the internal concerns of a state, neutral powers are bound to resist the invader.[p]

It is obvious that, if any diplomatic interventions are called for, they can only be exercised through the recognised official channels of international communication. Direct interference by either House of Parliament in the domestic or municipal concerns of a foreign country would be highly irregular and unconstitutional.[q] If, however, by virtue of existing treaties with a foreign state, or for any other reason, the British crown possesses a distinct and formal ground for interposition in a domestic matter arising within a foreign territory, it would be perfectly regular for either House to address the crown to exercise that right; or for either House themselves to appoint a committee to institute inquiries into matters within the jurisdiction of foreign countries, but in relation to which British subjects have a direct interest.

When Parliament may interpose in affairs of foreign powers.

On February 7, 1872, the House of Commons appointed a select committee to report upon the subject of railway communication between the Mediterranean, the Black Sea, and the Persian Gulf, with a view to the furtherance of British interests in railway communication with India. This committee reported on July 22.[r]

On February 23, 1875, the House of Commons appointed a select committee to inquire into the circumstances attending the making of contracts for loans by British subjects with certain foreign states, and into the causes which have led to the non-payment of the

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[p] Earl Russell (citing authorities) in Essay on the Eng. Const. new ed. pp. lxxxii.–xciii. And see his speech in Hans. D. v. 176, p. 1178; *Ib.* v. 188, p. 146; Quar. Rev. v. 146, p. 88; the proposed votes of censure upon the policy of the government on the Schleswig-Holstein question, in the H. of Lords, on April 11, and in the H. of Com. on July 4, 1864; the discussion, in the Lords, on affairs of Austria, &c., May 8, 1866; and the debate, in the H. of Com., on the Treaty of Luxemburg, June 14, 1867. For the opinions of Earl Derby and Lord Stanley on non-intervention, see Hans. D. v. 184, pp. 1154, 1218, 1253. See also *Ib.* Ap. 12, 1872; and in later years to 1870, cited in Amos, Fifty Years of Eng. Const. p. 365, &c.

[q] See Ld. Stanley's remarks on a proposal to record the opinion of the H. of Com. on the murder of Maximilian, Emperor of Mexico, and his generals, Hans. D. v. 188, pp. 1393, 1700.

[r] Com. Pap. 1872, v. 9, p. 171. And see Hans. D. v. 226, p. 871.

principal and interest of such loans. This committee reported on July 29.[s]

The Pacific Islands' Protection Act, 38 & 39 Vic. c. 51, sec. 6, authorised the Queen to exercise power and jurisdiction over British subjects within any islands, &c., of the Pacific Ocean not within the Queen's dominions, or within the jurisdiction of any civilised power.

Such proceedings, however, must be restrained within the limits of political expediency, and should not be persevered in, if opposed, on this ground, by the responsible advisers of the crown.[t]

Lafayette, &c.

In the years 1794 and 1796,[u] the House of Commons was moved to address the crown to intercede with the government of Prussia for the liberation of General Lafayette and other Frenchmen, who had been captured during the war with France, and confined in Prussian prisons. The proposed addresses were supported by Fox and other leading Whigs, on the ground that Lafayette and his friends were not subjects either of Prussia or Austria; that they had not violated the laws of either country, but were mere prisoners of war, and that England, as an ally of Prussia, was entitled to intercede in their behalf. Mr. Pitt, however, successfully resisted the motions on constitutional grounds. He said, 'No instance of such interference as is now proposed has ever occurred at any former period . . . . . nor could such interference be attempted without establishing a principle of the most unwarrantable tendency; a principle inconsistent with the internal policy and independent rights of foreign states.' 'It would be improper for this House to take any share in a transaction which in no degree comes within their province, and on which their decision could have no influence.'[v]

Polignac, &c.

On a similar occasion, on May 31, 1836, a motion was made in the House of Commons for an address to his Majesty to use his good offices with his ally, the King of the French, for the release of Prince Polignac and other state prisoners, formerly ministers of state of the late King Charles X., now confined in the fortress of Ham for attempting a revolution in France, which was afterwards successfully accomplished by others in July 1830, and by means of which the present King of the French was placed upon the throne. The foreign secretary (Lord Palmerston), though personally sympa-

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[s] Com. Pap. 1875, v. 11, p. 1.

[t] Ld. Palmerston, on proposed address for the recognition of the Southern American Confederacy, Hans. D. v. 172, pp. 556, 668.

[u] See Parl. D. on General Fitzpatrick's motions on March 17, 1794, and Dec. 16, 1796.

[v] Parl. Hist. v. 32, p. 1362.

thising in the object sought to be obtained by the motion, declared that the House 'could take no step so inexpedient, or even dangerous, as to ask the King of England by address to interfere in matters connected with the domestic concerns of another country.'[w] After a short debate, the motion was withdrawn.

Port of Slito.

On March 5, 1839, a member moved an address for correspondence between the Foreign Office and the British minister at Stockholm relative to the erection of Slito, in Gottland, into a free-port, to the manifest advantage of British interests. Lord Palmerston opposed the motion, because no sufficient parliamentary grounds for it had been shown; and because neither 'this House nor the English Government has any business to meddle with the internal affairs of the Government of Sweden,' as would be done were this motion to prevail. It was accordingly negatived.[x]

And on May 10, 1861, a motion for copies of despatches from our ambassador at Vienna, describing the constitution lately granted by the Emperor of Austria to his subjects, was withdrawn; on its being stated by the foreign secretary (Lord John Russell) that, 'although there is no secret about the matter,' it was not desirable to produce papers 'which relate so entirely to the internal affairs of Austria.'[y]

But there is a manifest difference between an unauthorised interference in the municipal proceedings of a foreign country and interference with a specific object, under a specific treaty.[z]

But in any case it is not regular to lay before Parliament copies of official documents of foreign countries, unless they are in the formal and official possession of government.[a] And it is a rule which, as a matter of courtesy, is always observed, that, when documents have been communicated to the British Government by foreign powers, they are not laid before Parliament without first consulting said powers as to whether or not they desire them to be published.[b]

Affairs in Poland.

Recognising this distinction, the government acquiesced in motions made in the House of Commons, both in 1832 and 1842, for addresses for copies of manifestoes and ukases issued by the Russian Government, and relating to the administration of the kingdom of Poland; England having been party to a treaty, in 1815,

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[w] Mir. of Parl. 1836, p. 1611. And see Life of T. S. Duncombe, M.P. v. 1, pp. 237-244.

[x] *Ib.* 1839, pp. 786-792; see also *Ib.* p. 2762.

[y] Hans. D. v. 162, p. 1870.

[z] Earl Derby, *Ib.* v. 234, p. 1823.

[a] *Ib.* v. 83, p. 423; *Ib.* v. 217, p. 1087.

[b] *Ib.* v. 173, pp. 330, 861.

by which the condition of Poland had been regulated, and subsequent acts of the Russian Government towards the Poles having taken place, in alleged contravention of that treaty, so that the Parliament of England possessed a right to information as to the grounds upon which that condition had been changed, and were justified in expressing their sympathy with the sufferings of Poland, although it might not be expedient for the government to take any formal steps that would be regarded as hostile or offensive by Russia.[c]

A motion for an address to the crown for a copy of the instructions by the Government of the United States to its officers for the suppression of the slave trade was opposed by the administration, because, although the instructions had been communicated to the British Government under a recent treaty, yet it was no part of the duty of the British Government to communicate them to Parliament, but rather for the United States Government to determine whether they should publish them or not.[d]

Poland.

But, on March 17, 1865, Lord Palmerston opposed a motion condemnatory of the conduct of Russia towards Poland, on the ground that the records of Parliament already contained a deliberate expression of opinion on the subject, and that it was not desirable to weaken this proceeding by any mere repetition of similar opinions. Such motions, he contended, should only be resorted to in order to obtain from the House once and for all a decisive expression of opinion, which may have the effect of influencing events, or, if necessary, of obtaining from government some action with a view to give effect to the same. The motion was accordingly withdrawn.

Sound dues.

On March 16, 1841, a member moved to resolve that, in the opinion of the House of Commons, certain tolls, known as the Sound dues, levied by the King of Denmark on British (and other) shipping were unjust, and required revision. The foreign secretary admitted the fact, and the truth of the general statements urged in its behalf; also, that the grievance was one of long standing; but he declared that negotiations had been recommenced for the removal of the tolls, and that it was therefore inexpedient for the House to interfere. Sir R. Peel (in Opposition at the time) concurred in the inexpediency of interference by the House in foreign negotiations, but considered that, if the crown should be unable to procure redress, the House might properly and advantageously interpose, and fortify the crown by a temperate expression of opinion on the subject, which would doubtless have weight with the Danish Government. By general consent, the present motion was set aside by the previous question, to be renewed at another

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[c] Sir R. Peel, in Hans. D. v. 64, pp. 823-825. [d] *Ib.* v. 71, p. 581.

time, if necessary.[e] The House was afterwards informed, in reply to a question, of the satisfactory progress of the negotiations.[f]

Protection of British subjects.

The British Government has likewise a right to interfere and demand redress from a foreign government whenever there is reason to believe that any British subject had suffered a wrong for which that government was responsible, and had failed to obtain redress. Papers, in such cases, should be submitted to Parliament; and if it should appear that there is any ground of complaint against the Foreign Office, that department would be amenable to parliamentary criticism and censure for the same.[g] But the government have distinctly declined to take up, as international questions, complaints of British subjects against foreign states arising out of private loan transactions; or to interpose, except by good offices, between bondholders and the states by which they may be wronged.[h]

Opinions expressed in Parliament on foreign affairs.

Bearing in mind the constitutional limits wherein the active interference of Parliament in the affairs of foreign nations is necessarily restrained, there is, nevertheless, an important function fulfilled by the British legislature, as the mouthpiece of an enlightened public opinion, which calls for special remark. When events are transpiring abroad upon which, in the interest of humanity, or of the peace and good government of the world, it is desirable that British statesmen should have an opportunity of declaring their sentiments, from their place in Parliament—whether by so doing they merely express, with the weight due to their personal character and high official position, the general

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[e] Mir. of Parl. 1841, pp. 790–793.

[f] *Ib.* p. 2364

[g] Affairs of Greece, Hans. D. v. 111, p. 1293; *Ib.* v. 112, pp. 228, 329, 478, 600–739. Case of the 'Tornado,' *Ib.* v. 200, p. 2109. Murder of British subjects by Greek brigands, *Ib.* v. 201, pp. 1123, 1162; v. 203, pp. 5, 1412.

[h] Foreign Sec. despatch of Ap. 26, 1871, quoted in Hans. D. v. 225, p. 201. And see observations in H. of Com. on July 21 and Aug. 14, 1876, on the guaranteed Turkish Loan of 1854. And see Hans. D. v. 235, p. 1322.

Foreign affairs.

feelings of the country, or whether they aim at influencing public opinion itself by intelligent and authoritative explanations upon points concerning which they possess peculiar facilities for instructing the public mind—it is customary for some member to call the attention of the House and of the government thereto, in an informal way, or upon a motion for papers [i]—or, if need be, to propose resolutions, to express the sense of the House in regard to the proper action of the British Crown in such a contingency. But, while important beneficial results may follow from the temperate use of this practice, it is liable to great abuse. Discussions upon topics which are beyond the jurisdiction of Parliament to determine should not be provoked except upon grave and fitting occasions. When by the operation of existing treaties, the position or interests of England may be affected by events transpiring in other countries [j]—or where there is a reasonable probability that the observations of statesmen and politicians in the British legislature will have a beneficial influence upon the fortunes of the country to which they refer [k]—they would not be unsuitable, or out of place. But whenever the ministers of the crown discourage or deprecate the expression of opinions in Parliament upon the course of affairs in other countries, it is safer to defer to their guidance, and to refrain from utterances that may be hurtful to the cause which it is

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[i] *E.g.* see the observations of Sir R. Peel and of Ld. John Russell on religious intolerance in Spain, Hans. D. v. 161, pp. 2054, 2072; discussion on the affairs of Denmark, and Holstein, in the H. of Lords, on March 18, 1861; and on the Pope and the Kingdom of Italy, in the Lords, on April 19, 1861; debates on the affairs of Poland, in the Lords, on July 19, 1861, and in the H. of Com. on Feb. 27, 1863. And the debate in the Commons on the state of Turkey on June 18, 1875; and the debates, in 1877, upon the Eastern Question, especially on the resolutions proposed by Mr. Gladstone. Hans. D. v. 234, pp. 101, 955.

[j] Hans. D. v. 169, p. 884. And see the debate in the Commons (upon a formal motion), Hans. D. v. 190, p. 1983, on the law of expatriation.

[k] Sir F. Goldsmid and Ld. Palmerston, *Ib.* v. 167, pp. 1171, 1195.

desired to promote, and that might even operate prejudicially upon the interests of the British nation.[1]

Concluding remarks.

We have now passed under review some of the prerogatives of the British Crown, and have endeavoured to point out, in the light of precedent, and with the help of recognised authority in the interpretation of constitutional questions, the proper functions of Parliament in relation thereto. We have shown that the exercise of these prerogatives has been entrusted, by the usages of the Constitution, to the responsible ministers of the crown, to be wielded in the king's name and behalf, for the interests of the state; subject always to the royal approval, and to the general sanction and control of Parliament. Parliament itself, we have seen, is one of the councils of the crown, but a council of deliberation and advice, not a council of administration. Into the details of administration a parliamentary assembly is, essentially, unfit to enter; and any attempt to discharge such functions, under the specious pretext of reforming abuses, or of rectifying corrupt influences, would only lead to greater evils, and must inevitably result in the sway of a tyrannical and irresponsible democracy. 'Instead of the function of governing, for which,' says Mill,[m] 'such an assembly is radically unfit, its proper office is to watch and control the government; to throw the light of publicity on its acts; to compel a full exposition and justification of all of them which anyone considers questionable; to censure them if found to merit condemnation; and if the men who compose the government abuse their trust, or fulfil it in a manner which conflicts with the deliberate sense of the nation, to expel them from office' —or, rather, compel them to retire, by an unmistakable expression of the will of Parliament. Instead of attempting to decide upon matters of administration

[1] Hans. D. v. 195, p. 362.

[m] Mill, Rep. Govt. p. 104.

by its own vote, the proper duty of a representative assembly is 'to take care that the persons who have to decide them are the proper persons,' 'to see that those individuals are honestly and intelligently chosen, and to interfere no further with them; except by unlimited latitude of suggestion and criticism, and by applying or withholding the final seal of national assent.'[n]

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[n] Mill, Rep. Govt. pp. 94, 106. The whole chapter 'On the Proper Functions of Representative Bodies' is deserving of a careful study.

CHAPTER VI.

THE ROYAL PREROGATIVE IN CONNECTION WITH PARLIAMENT.

Prerogative defined.

THE term Prerogative may be defined as expressing those political powers which are inherent in the crown, and that have not been conferred by Act of Parliament, and which accordingly continue within the competency of the sovereign, except in so far as they have been modified or restrained by positive legislation.[a] For the king's prerogative is a part of the law of the realm, and hath bounds set unto it by the laws of England.[b] All that is meant by prerogative, nowadays, is 'the practical division which it is necessary to make between the duties of the executive and the duties of the legislative power.'[c]

The prerogatives of the sovereign of Great Britain are of vast extent and paramount importance. In the crown is centred the whole executive power of the empire, the functions appertaining to the administration of government, and supreme authority in all matters—civil, judicial, military, and ecclesiastical.

The king is, moreover, the head of the legislature, of which he forms an essential constituent part; the generalissimo, or first in command, of the naval and military forces of the state; the fountain of honour and

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[a] Cox, Inst. p. 592. And see Ld. Cairns' speeches on the Army Regulation Bill, Hans. D. v. 208, p. 520; and on the Irish Peerage, *Ib.* v. 225, p. 1214.

[b] Coke, 3 St. Tri. p. 68.

[c] Mr. Gladstone, Hans. D. v. 214, p. 476. And see Law Mag. 4th S. v 8, pp. 260–275.

of justice, and the dispenser of mercy, having a right to pardon all convicted criminals; the supreme governor, on earth, of the national church; and the representative of the majesty of the realm abroad, with power to declare war, to make peace, and to enter into treaty engagements with foreign countries.

It is beside the object of the present writer to consider the prerogatives of the crown in their legal aspect; for information on this subject the treatises of Chitty and Bowyer on Prerogative must be consulted. The present enquiry is confined to an investigation of the prerogative from a constitutional point of view, in reference more particularly to the legitimate control of Parliament over the exercise of the same on the part of ministers of state.

The English constitution is unwritten. It rests upon a series of traditions as well as of Parliamentary enactments: 'unconstitutional,' therefore, is not only what is at variance with a particular law or tradition, but what is opposed to the spirit of the constitution.[d] Mr. Hallam defines an *unconstitutional*, as distinguished from an *illegal*, act, to be 'a novelty of much importance, tending to endanger the established laws.'[e]

Responsibility of ministers for every exercise of the prerogative.

For it must be observed, of all the royal prerogatives, that they are held in trust for the benefit of the whole nation, and must be exercised in conformity with the constitutional maxim, which requires that every act of the royal authority should be performed by the advice of councillors who are responsible to Parliament, and to the law of the land.[f] This responsibility is now acknowledged to be thorough and complete; and as no public act of the sovereign is valid which is not performed under the advice of some responsible minister, so, on the other hand, for every exercise of the royal

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[d] See Stockmar's Mem. v. 2, p. 490.

[e] Hallam, Const. Hist. v. 3, p. 106. And see Quar. Rev. v. 140, p. 234.

[f] See *ante*, p. 265; Palmerston, Hans. D. v. 153, p. 1415.

authority, ministers must be prepared to account to Parliament, justifying the same, if need be, at their own peril.

Dangers of ministerial oligarchy.

Nevertheless it is incumbent upon ministers to bear in mind that they are charged with the maintenance and defence of the rights of the crown under the British constitution; and that it is one of their foremost duties to protect and preserve intact the royal prerogative. Since 1830 the constitutional monarchy of England has been constantly in danger of becoming a pure ministerial oligarchy; to the detriment, not only of the rights of the sovereign in the body politic, but also of certain vital interests of the commonwealth, which we have elsewhere shown it is the especial province of the sovereign to conserve.[g]

Ministerial trust

The advisers of the crown are responsible not only for the legality, but also for the policy and wisdom, of every measure of government. And they are responsible not merely for overt acts of government, but likewise for whatever policy, be it active or passive, that may be agreed upon between the sovereign and his ministers while they continue in power.[h] Having so vast a trust reposed in them, they are bound to use their best endeavours, irrespective of all party claims or personal advantages, to administer the affairs of the kingdom for the public good, and for the honour and credit of the sovereign.

In conducting the necessary measures of government through the Houses of Parliament, it is the duty of ministers to shield the crown from personal obloquy, to avoid all reference to the expressed opinions of their sovereign for the purpose of influencing the freedom of debate, and to assume themselves an entire responsi-

[g] See *ante*, p. 305. Stockmar's essay, in Martin's Pr. Consort, v. 2, p. 546. And see Gladstone's criticism thereon, in Church Quar. Rev. v. 3, p. 173.

[h] Palmerston, Bulwer's Life of, 1, p. 75.

bility for the administration of public affairs in all its details.[1]

It is proposed, in the present and succeeding chapters, to examine, in detail, the leading prerogatives of the crown, which are now exercised solely upon the advice of responsible ministers, and to point out the rightful authority of Parliament in relation to each. In every instance, after defining the limit within which the prerogative in question is properly subject to parliamentary supervision and control, a selection of precedents will be given, in illustration of the doctrine in the text. Before entering upon this enquiry, however, it will be necessary to consider, briefly, the relations between the crown and the Parliament itself.

Parliament.

The Parliament of Great Britain is composed of the king (or queen) and the three estates of the realm—to wit, the Lords spiritual, the Lords temporal, and the Commons. But it is in the crown, and not in the body which the law assigns to advise and assist the crown, that the legislative authority is vested by the constitution. In the words of the old Year Book (of 23 Edward III.) it may still be said, that 'the king makes the laws, by the assent of the peers, &c., and not the peers and the commune.'[j] In its collective capacity, Parliament exercises supreme authority in and over the empire, to which the constitution has assigned no limit. In the words of Sir Edward Coke, the power of Parliament 'is so transcendent and absolute that it cannot be confined, either for causes and persons, within any bounds.'

Its dependence upon the crown.

From the supremacy of the sovereign in a constitutional monarchy, it necessarily follows that while regular meetings of Parliament are indispensable, the legal existence of this high court results altogether from

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[1] See *post*, v. 2. Govt. of Eng. p. 51. Ld. Redesdale

[j] Stubb's, v. 2, p. 572. Hearn, in Colchester's Diary, v. 3, p. 47.

the exercise of the royal prerogative. It is summoned, by virtue of the king's writ, to meet for despatch of business, at whatsoever time or place he may please to direct. The necessary interval between the date of summons by royal proclamation and the meeting of Parliament was formerly fourteen days, but by a recent statute, it has been reduced to six days.[k] Parliament.

In 1858 an informal discussion arose in the House of Commons, in which it was suggested that it would be desirable to have meetings of Parliament in the autumn, so as to secure a prorogation early in the summer.[l] Next session, an address to the crown to this effect was proposed, and negatived, after a short debate.[m] In 1873, a similar address was again proposed, but after a debate, the motion was withdrawn.[n]

Parliament can only commence its deliberations at the time appointed by the king, and cannot continue them any longer than he may allow. Formerly, upon the death of the reigning monarch a dissolution of Parliament immediately ensued. But after the Revolution an existing Parliament was empowered to continue in existence, for a period of six months and no longer from the death of the sovereign. And by a clause in the Reform Act of 1867, it is provided that it shall be no longer compulsory for a dissolution of Parliament to take place at any future demise of the crown.[o] The power of adjournment is discretionary with each *House*; but the crown is empowered by law to put an end to an adjournment extending beyond fourteen days.[p] The deliberations of Parliament may be cut short at any moment by the exercise of the royal power of prorogation,[q] which quashes all proceedings pending at the

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[k] Hans. D. v. 203, p. 1146; 33 & 34 Vic. c. 81.

[l] *Ib.* v. 151, pp. 1185, 1198.

[m] *Ib.* v. 155, p. 51.

[n] *Ib.* v. 214, p. 902.

[o] *Ib.* v. 189, p. 738. Act 30 & 31 Vic. c. 102, s. 51. See Anstey's Notes on the 'Representation of the People's Act, 1867,' p. 22.

[p] May, Parl. Prac. 1883, p. 52. And see Colchester's Diary, v. 2, p. 463.

[q] *Ib.* v. 2, p. 374. And see *ante*, p. 189.

Parliament.

time, except impeachments by the Commons, and writs of error and appeals before the House of Lords—which, being judicial proceedings, continue in *statu quo* from Parliament to Parliament.[r]

All trials in progress before election committees are suspended by a prorogation of Parliament, but are resumed, by statutable authority, in the ensuing session.[s] By a prorogation, all resolutions,[t] bills, and other proceedings, pending in either House, are naturally terminated, and cease to have any further effect, except in so far as they may be continued in operation by the express authority of Parliament.

The only apparent exception to the rule concerning resolutions is in the case of standing orders. By the custom of Parliament these are accounted to be in force, in succeeding sessions, until rescinded. They are considered as being declaratory of the law and practice of Parliament; and, without relying upon their absolute validity, the House agrees to adhere to their observance.[u]

But in the case of private bills generally, except Indian Divorce Bills, in certain cases,[v] or of railway bills in particular, relief has been repeatedly granted to the parties concerned in promoting or opposing such measures, when a session of Parliament has been brought to a sudden and premature close, on account of the exigencies of political warfare. This was done in regard to all private bills,—in 1820, 1831, 1841, 1857, and in 1859,—and as respects railway bills only, in 1845 and 1847, by the adoption, in both Houses, of resolutions, permitting such bills to be reintroduced in the following session, and by means of *pro forma* and unopposed motions advanced to the stages at which they severally stood when the prorogation took place.[w] The orders made in 1859, for this purpose, were peculiarly simple and effectual, and will probably be followed hereafter, in preference to earlier precedents.[x] So in 1871, the Tramways (Metropolis) Bills were suspended in a similar manner. But, inasmuch as these Bills had been submitted to Parlia-

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[r] Hats. Prec. v. 4, p. 273, *n.*

[s] Act 11 & 12 Vic. c. 98.

[t] Com. Pap. 1861, v. 11, p. 439.

[u] May, Parl. Prac. ed. 1883, p. 194. Com. Pap. 1859, s. 1, v. 3, p. 37. Com^c. on the Jews' Act, Hans. D. v. 152, p. 462. And see Hans. D. v. 192, p. 1078.

[v] 1 Geo. IV. c. 101.

[w] See Com. Journals, v. 75, p. 119; vol. 86, pt. 2, p. 525. Mir. of Parl. 1841, pp. 2303, 2346. Hans. D. v. 144, p. 2209; *ib.* v. 153, pp. 1528, 1607.

[x] May, Parl. Prac. ed. 1883, p. 779.

ment under the provisions of the Tramways Act of 1870, it was necessary to sanction this proceeding by a special Act of Parliament, in addition to the resolutions of both Houses.[y]

It was suggested, in the Session of 1865, that on account of the great mass of private business before Parliament, and the desirability of an early prorogation, with a view to an immediate dissolution, similar resolutions should be agreed to; but the case was not deemed sufficiently urgent and unexpected to warrant such a course, which should only be resorted to when the session has been brought to an abrupt and premature termination.[z]

Parliamentary Proceedings between the Two Houses.

Legislative measures between both Houses.

For nearly seventy years, it has been a frequent and increasing cause of complaint that, owing to the late period of the session at which it is usual for Bills to be sent up from the Commons to the Lords for their concurrence, sufficient time is not afforded to that House for the adequate consideration of legislative measures.[a] On April 14, 1848, Lord Stanley (afterwards Earl of Derby) submitted to the House of Lords a Bill for the remedy of this evil. Admitting that it was expedient, as a general rule, that legislation should be initiated in the Lower House—inasmuch as Bills originating with the Lords were seldom favourably received by the other branch,[b] because 'the more proper function of their lordships was to control, amend, and revise, the legislation of the House of Commons,' he proposed to grant to the House of Lords 'the power, when they saw fit, upon the receipt of a Bill passed by the other House of Parliament, to adjourn the consideration thereof from the period of the session at which they could not deliberately enter upon its consideration to an early day to be named at the commencement of the next session,' to be then proceeded upon at the stage at which it had been postponed.[c] The Bill was

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[y] Hans. D. v. 212, p. 582. Act 35 and 36 Vic. c. 43.

[z] *Ib.* v. 180, pp. 692, 851; and see *ib.* v. 80, p. 854.

[a] *Ib.* v. 159, p. 2145, and v. 194, p. 593.

[b] *Ib.* v. 119, p. 250.

[c] *Ib.* v. 98, p. 329.

Facility of business between both Houses.

read a second time, notwithstanding the strenuous opposition of Lords Campbell and Redesdale, who urged that it was open to 'strong constitutional objections,' and would tend to aggravate disputes between the two Houses. With a view to obviate some of these objections, Lord Stanley moved certain amendments, to preserve the prerogative of the crown intact, and to afford to the House of Commons an opportunity of re-considering a postponed Bill, even though it should have passed the Lords, in the following session without amendment. These amendments were agreed to, and the Bill was passed.[d] In the House of Commons, the Bill was read twice, and then referred to the select committee on public business.[e] The Bill was carefully considered by this committee, but they simply reported that they did not think it advisable to recommend it for adoption by the House;[f] a conclusion which is said to have been arrived at 'in order to avoid any points of controversy between the two Houses.'[g]

In 1852, a Parliamentary Proceedings Facilitation Bill, similar to that brought in by Lord Derby in 1848, was laid upon the table of the House of Lords, by Lord Lyndhurst. It was read a first time, but was afterwards dropped.[h]

However, in the year 1854, the project was revived by another committee of the House of Commons on the business of the House. In a draft report, which appears upon their minutes, the committee state that 'they have also considered a resolution in favour of a plan brought into the Upper House by the Earl of Derby in 1848, for facilitating public business by "enabling either House of Parliament to adjourn proceedings during the prorogation of Parliament, upon certain Bills passed by

[d] Hans. D. v. 98, pp. 981, 1255; v. 99, p. 246

[e] *Ib.* v. 100, pp. 131–137.

[f] Com. Pap. 1847–8, v. 16, p. 146.

[g] Hans. D. v. 194, p. 619. May, Parl. Prac. ed. 1883, p. 338, gives a summary of the attempts, from 1848 to 1869, to pass such permissive Bills and of the objections thereto.

[h] *Ib.* v. 119, p. 317.

the other House, and to resume proceedings thereupon after such prorogation"; and they have considered a proposal which will shortly be submitted to the House of Lords to ensure an earlier termination of the session by making a rule that no Bill shall be read a second time after a certain day, except under special and urgent circumstances.' 'Upon these suggestions,' it is added, 'your committee is unprepared to offer any decided opinion.' But this paragraph was omitted in the report which was finally adopted by the committee.[i]

The other proposal referred to in the draft report above cited, was designed to apply to Public Bills, a restrictive principle of a similar nature to that already enforced, with the best effect, in reference to private business. On May 2, 1854, the House of Lords upon motion of Lord Redesdale, agreed to a sessional order, declaring 'that this House will not read any Bill a second time after July 25, except Bills of aid or supply, or any Bill in relation to which the House shall have resolved, before the second reading is moved, that the circumstances which render legislation on the subject matter of the same expedient are either of such recent occurrence or urgency as to render the immediate consideration of the said Bill necessary.'[j] In the same session, after a long debate, the Lords resolved, upon division, and contrary to the opinions of Lord Redesdale, to allow a Bill concerning bribery to proceed notwithstanding this order, upon the ground of urgency.[k] In the session of 1855, the Order was renewed, with the consent of the ministry.[l] Certain Bills were nevertheless allowed to proceed, on the ground of urgency, though not without opposition.[m] The Order was again

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[i] Com. Pap. 1854, v. 7, pp. 31–32.

[j] Hans. D. v. 132, p. 1188. See observations in the House of Commons concerning this Order, *ib.* v. 135, p. 417.

[k] *Ib.* v. 135, pp. 943, 1182.

[l] *Ib.* v. 138, p. 94.

[m] *Ib.* v. 139, pp. 1850, 1895, 1923, 2023.

Proceedings between both Houses.

renewed in 1856, assurances being given as to its beneficial operation.[n] Likewise in 1857; but not without complaint in the House of Commons, owing to the unusual shortness of the session.[o] It was again renewed in 1858;[p] but not in 1859, because, as in 1857, two sessions were held in that year. It was renewed for the last time in 1860.[q] During this session the rule was pronounced—by Mr. E. P. Bouverie, who had filled the office of chairman of committees in the House of Commons—to be 'a great infringement of the privileges of the Commons'; but it was vindicated by Mr. Disraeli, who considered that 'the effect of the rule, has, on the whole, been salutary.'[r] Several debates took place, in the Lords, during this session, upon motions to exempt particular Bills from the operation of the rule.[s]

On August 13, 1860, the resolution of urgency was proposed on behalf of the Savings Bank, &c., Investments Bill, a government measure affecting the financial arrangements of the country, though not strictly a Bill of supply, but on division, the numbers being equal, the motion was negatived.[t] On account of the importance of the Bill, and an apprehension that its being laid aside would occasion a misunderstanding between the two Houses, ministers resolved upon again taking the sense of the House upon this motion. Admitting the advantages which have resulted from the use of this order, Earl Granville (the president of the council) declared that he had often thought 'that strictly and in principle that resolution could not be defended, and if its examination were passed, it would be found not to be in accordance with our relations either with the other House or with the crown.'[u] Accordingly, on

[n] Hans. D. v. 142, p. 245; v. 143, p. 1180.
[o] *Ib.* v. 147, pp. 419, 557, 714, 717.
[p] *Ib.* v. 149, p. 1353.
[q] *Ib.* v. 159, p. 550.
[r] *Ib.* pp. 1958, 1961.
[s] *Ib.* v. 160, pp. 346, 417, 627, 1031.
[t] *Ib.* v. 160, p. 1180.
[u] *Ib.* pp 1347, 1415, 2145.

August 20, the resolution of urgency was again proposed on behalf of this Bill and agreed to, Lord Monteagle entering a protest against this decision.[v]

Proceedings between both Houses.

On February 8, 1861, Lord Derby, upon motion for the appointment of a select committee on the public business of the House,

[A similar motion, which gave rise to a debate on the expediency of some legislation on this question, was made in the House of Lords by Lord Derby on July 19, 1860, but withdrawn[w]]

adverted to Lord Redesdale's annual sessional order, fixing the day after which their lordships would decline to proceed upon Bills unless they were of an urgent character. He said that it had worked well, but that there was much difficulty in determining upon the question of urgency. He thought it would be 'perfectly easy for the Lords to act upon a rule, which he believed they might adopt of their own authority, of suspending Bills at the termination of one session, and resuming them in the next,' provided that the House of Commons should not think it necessary when they sent Bills back to them to put them through all their stages again. Lord Redesdale objected to this idea, and considered that 'there might be inconvenience, if not danger, in such a course.' The Lord Chancellor (Campbell) would leave these questions to the consideration of the select committee, but while he agreed that Lord Redesdale's resolution had worked beneficially in practice, he thought 'it encroached upon the privileges of the House of Commons and the prerogative of the crown.'[x] Later in the session, Lord Redesdale defended the principle of his annual resolution, but declared that he should refrain from moving it while the matter was under consideration by committees of both Houses, now sitting on public business.[y] Subsequently (in 1869) Lord Redes-

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[v] Hans. D. v. 160, pp. 1551-1554.
[w] *Ib.* v. 159, pp. 2139-2150.
[x] *Ib.* v. 161, pp. 183-186.
[y] *Ib.* v. 162, p. 414. But see *ib.* v. 164, p. 1358; v. 199, p. 424. Smith, Parl. Remem. 1861, p. 9.

Proceedings between both Houses.

dale stated that 'in deference to a feeling of jealousy on the part of the Commons, he gave up pressing for a renewal of the order; but he did so on the understanding that the principle of it would be adhered to by the governments of the day.'[z]

The select committees appointed by both Houses in this session to consider alterations for the promotion of the despatch of public business, having been empowered to communicate with each other, certain conclusions arrived at therein were transmitted by letter from the chairman of one committee to the chairman of the other. The initiative was taken by Sir James Graham, the chairman of the Commons committee, who wrote, on March 14, 1861, to Lord Eversley, the chairman of the Lords committee, upon several points, one of which was to the effect that the Commons committee were 'disposed to adhere to the report of the committee in 1848,' which declared, 'that, having considered the provisions of the Parliamentary Proceedings Adjournment Bill, they do not think it advisable to recommend it for adoption by the House.'

Whereupon, the Lords committee, on motion of Earl Grey, agreed to the three following resolutions, to be adopted by both Houses of Parliament:—

1st. That it is expedient, in certain cases, to adopt an abridged form of proceeding with reference to Bills which shall be again brought before this House after having been passed by it in the immediately preceding session of the same Parliament.

2nd. That the Bills in respect to which such abridged form of proceeding may be adopted shall be, *mutatis mutandis*, the same Bills which the House may have passed and sent to the other House, and as to which that House may have resolved that there did not remain time for their due consideration in the session in which they were received.

[z] Hans. D. v. 198, p. 1474.

3rd. That on a resolution being moved, that it is expedient again to pass, and to send to the other House for its concurrence, any such Bill, the question shall be put whether the House will agree to the same, and on such resolution being agreed to, the Bill to which it relates shall be forthwith sent to the other House for its concurrence, without any further question being put, or any debate allowed.

Proceedings between both Houses.

The foregoing resolutions were transmitted to the Commons committee on April 2, with an intimation that, if they met with the concurrence of that committee, the Lords committee were prepared to agree to them; and to give due consideration to any amendment that might be suggested therein. It was added, that the resolutions 'would not, in any degree, better the discretion of the House, or interfere with the passing of a Bill in the ordinary manner, nor would they apply to any case where it was introduced in an amended form.' In reply, the Lords committee were informed that the Commons committee would not agree to the proposed resolutions, being of opinion that instead of furthering the prompt transactions of public business, they would have an opposite tendency; 'and that, if common to both Houses, they would afford new facilities for retarding and postponing legislation.'

The Lords committee on May 7, reported to their own House the proceedings above mentioned. They referred to the regret which had been so frequently expressed, 'that Bills have been sent up by the other House of Parliament, at so late a period of the Session as to render it impossible to give them that full consideration which the public interests require'; a complaint of long standing, as is 'proved by the standing order of May 5, 1668, and the subsequent proceedings of this House.' But as the Commons committee had declined to agree to the plan devised by their lordships' committee, 'for the reasons set forth in their report,'

Proceedings between both Houses.

the committee deemed it useless to prolong its sittings. A draft report had been submitted by Earl Grey, adverting to the action of the Commons committee, combating the arguments adduced in their report, and recommending to the House 'that it should steadily refuse to proceed with Bills to which it has not a fair opportunity of giving the deliberate consideration their importance requires, leaving to the House of Commons the responsibility of adopting such measures as it may think fit, in order to prevent the strict observance of this rule from standing in the way of that progress in the work of legislation which the country has a right to expect from Parliament,' but this report was negatived.[a]

Meanwhile, the Commons committee made their report. After recapitulating various improvements on the method of transacting public business which they recommended for adoption by the House, they referred to the three resolutions above mentioned, which had been communicated to them by the Lords committee, and explained the reasons for which they had been unable to agree to them. They also noticed the 'proposal made in the other House that a power should be given by statute to either House of Parliament of suspending (at any stage of proceeding) Bills which shall have been passed by the other House, and of resuming such Bills in the succeeding session at the precise stage where they had been dropped.' They observed that 'the objections to this proposal are grave and numerous'; for that by it efficient legislation would be retarded, and 'the opportunities for re-considering, improving, and amply discussing, important measures would be inconveniently abridged.'

'Moreover, this suspending power in either House of Parliament, if exercised at its own discretion, would be at variance with the prerogative of the crown.'[b] In

[a] Com. Pap. 1861, v. 11, pp. 422–429.

[b] Ld. Colchester's Diary, v. 1, p. 432.

the Bill introduced in the House of Lords in 1848, there was a provision that the consent of the crown should be first duly signified to such suspension. This consent of the crown to the mode of dealing with the Bills not perfected by the concurrence of the 'other branches of the legislature, would be a novelty at variance with constitutional practice, not to be defended by any necessity. The prerogative of the crown, in all cases where the rights, interests, and property of the crown are not specially affected, is limited to assenting to or rejecting Bills which have passed both Houses. It is barred from all interference during the discussion of them in either House of Parliament.' For these reasons, the committee agreed with the committee in 1848, in thinking it unadvisable to sanction any such enactment.[c]

Proceedings between both Houses

In 1869, the Marquis of Salisbury revived the consideration of this question in the House of Lords, by the introduction of a Bill to enable either House of Parliament to suspend proceedings on a Bill in one session and resume the same in the next. In order to protect the royal prerogative, the Bill provided that the assent of the crown should be necessary to the resumption of proceedings in any case. And to save the privileges of the other House, it required that the House from whence the resumed Bill emanated should have a final vote upon it after the proceedings thereon had terminated. The leader of the government (Earl Granville) advised the House—on March 4—to agree to the second reading of this Bill, with an understanding that it should be afterwards referred to a joint committee of both Houses. Lord Redesdale, on constitutional grounds, was opposed to the principle of regulating parliamentary proceedings by statute, when the desired object could be effected by standing orders, which would more readily admit of alteration. He also thought it was unconstitutional to

[c] Ld. Colchester's Diary, v. 1, pp. 439, 440.

Proceedings between both Houses.

require the assent of the crown before the presentation of a Bill to the sovereign. Earl Derby approved of the Bill, it being similar to the one he had brought in, in 1848. But he objected to the consent of the crown being required to the resumption of proceedings; and also to the consent of the one House being necessary to the resumption of a Bill by the other. He preferred that on resumed Bills going back to the originating House, even if without amendment, that House should be at liberty to reconsider details, and even amend their own Bill. Earl Russell concurred in this suggestion. Lord Cairns likewise agreed therein; but would prefer, with Lord Redesdale, that the question should be dealt with by standing orders. He was, nevertheless, willing to refer the matter to a joint committee. The Marquis of Salisbury consented to amend the Bill by omitting any reference to the royal prerogative, and by providing that when a Bill went back to the originating House, that House should be empowered to amend it throughout, and not merely where it had been amended by the other branch. The Bill was then read a second time.[d]

On March 8, Lord Redesdale communicated to the House the draft of a standing order he had framed to accomplish the object in question. Earl Derby stated that Viscount Eversley (ex-Speaker of the House of Commons) was maturing a standing order for the same purpose. Earl Granville said that he found, on enquiry, that a Bill could not be formally referred to a joint committee unless it had been before both Houses. But he had no doubt such committee (if appointed) would consider the measure as carefully as though it had been formally referred to them.[e]

On March 14 and 15, a joint committee of both Houses was appointed 'to consider whether any facili-

[d] Hans. D. v. 194, pp. 588-620. [e] *Ib.* v. 194, p. 799.

ties can be given for the despatch of business in Parliament, especially in regard to the relations of the two Houses.'[f]

Proceedings between both Houses.

This committee made their report on August 2. Adverting to the Bill to facilitate Proceedings on Bills in Parliament, 'the committee admit, with some qualification, the existence of the evil which it is proposed to correct, but are of opinion that it can only be remedied by general consent,' and believe that the House of Commons would be unlikely now to take a different view from that which they took in 1848 on the subject. They consider 'that considerable expedition might be made in the progress of legislation, if more Bills, especially those of a legal or ecclesiastical character, were to originate in the House of Lords.'

A difficulty attending the first introduction of important public Bills, involving disputed points of public policy in the House of Lords, may be illustrated by the proceedings upon the Parochial Schools (Scotland) Bill, in the session of 1869. This Bill was first introduced by ministers into the House of Lords, but as they were in a minority in that chamber, the Opposition were enabled to remodel the Bill during its passage through the Lords to such an extent that it became the Bill of the Opposition. When it reached the House of Commons the Lord Advocate was unable to recommend it as a government measure. So he got the House to allow it to be committed *pro forma*, in order that he might introduce such amendments as were needful to restore the Bill to somewhat like its original form. He then took the discussion on the re-committal of the Bill, which, in the ordinary course, would have taken place on its second reading. This involved an apparent discourtesy to the House of Lords, and the setting aside, without adequate discussion, of their important and carefully prepared amendments.[g] It was not until August 9 that the Bill was returned to the Lords, with amendments which completely altered its character. Accordingly, upon decision, the consideration of the amendments was put off for three months; and the Bill, as amended by the Commons, was ordered to be reprinted, with a view to preserve a record of this transaction.[h]

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[f] Hans. D. v. 194 pp. 1309, 1560.
[g] *Ib.* v. 198, pp. 802–816.
[h] *Ib.* pp. 1470 1484, 1521; v. 200, p. 304.

Proceedings between both Houses.

But that 'the arrangement of public business between the two Houses can only be left to the discretion of her Majesty's ministers.' Moreover, it is evident that the excessive pressure of business in the House of Commons, while it occasions inconvenient delay in sending up Bills to the Lords, likewise obstructs the passage through that House of Bills which have originated in the Lords. The committee, however, submit copies of new standing orders, framed by Lords Eversley and Redesdale, and substantially approved by Sir E. May, to provide for the postponement of Bills—sent up to the Lords too late for their due consideration—until the next session; and for the resumption of proceedings thereon at that time by passing them rapidly through the stages prior to that at which it had been laid aside. Likewise providing for the re-introduction and summary passing of Bills which had passed one House in the preceding session and been dropped in the other (without having been actually rejected), so as to enable them to be re-considered in that House; but securing to the originating House an opportunity for the re-consideration of their own Bill, after it shall have been passed by the other House, either with or without amendment.[i]

On July 4, 1871, in view of the continued delays in sending up important Bills for the consideration of the Lords, Earl Grey again urged the adoption of some plan of the sort.[j]

Acts of Parliament.

In 1875, the Commons committee on Acts of Parliament recommended that where all the clauses of a consolidation Bill cannot be got through before the prorogation, the Bill should be suspended till the ensuing session, and resumed where it had been left off. But beyond the case of such Bills, Parliament still

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[i] Com. Pap. 1868-9, v. 7, p. 173. Rep. Com^e. on Despatch of business, pp. iii. iv. 21, 23.

[j] Hans. D. v. 207, p. 1079.

BRIGHT SECRETARIAT

regards this project unfavourably, so far as public Bills are concerned.[k]

Furthermore, the committee made certain recommendations further to facilitate private Bill legislation:—

Private Bills

I. That the House of Commons should not insist on its privileges in regard to local rates, in the case of private Bills, or in the case of public Bills confirming provisional orders.[1] In 1858, the Commons relaxed their privileges as regards local tolls and charges, but not as regards Bills imposing or authorising the imposition of *rates*. A committee of the House did, indeed, agree in 1848 to advise that the privilege should be abandoned, in the case of local rates or duties; but the resolution for the same was rescinded a week afterwards. While in the practice of the House itself there is a material difference of procedure between imperial and local taxes, yet the one class is so closely related to the other, and an increase of the latter frequently has such a marked effect upon the former, that the Commons have been unwilling to yield to the Lords in such matters. Sir E. May thinks, however, that in the case of Bills which are permissive—'which enable local authorities to impose taxes, without actually imposing them, the privileges of the Commons might readily be surrendered.' And if the House were disposed to relax their privileges further, it might do so in the words used by the committee in 1848, which exactly indicate the material distinction between the two classes of taxes—'provided such taxes shall be assessed and levied by local authorities for local purposes, and shall not be applied to the public service.' He would clearly advise such a concession in the case of *private Bills*, because in that case 'the parties who are

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[k] Rep. Com. on Acts of Parl. 1875, v. 8, p. 213; Evid. pp. 11, 112, 114. For papers and a discussion on this subject see Social Science Trans. 1875, p. 185.

[1] Com. Pap. 1868–9, v. 7, p. 174.

to be taxed petition Parliament for permission to tax themselves.' It is otherwise in the case of local rates imposed by public Bills.[m]

Opposed Private Bills.

2. The committee recommended the adoption of a series of resolutions reported by them, for referring opposed private Bills to a joint committee of both Houses, a method which they consider would introduce greater simplicity, and rapidity of proceeding, and a corresponding economy. This plan was considered in 1854, but was then deemed to be impracticable, because 'it was supposed to be one of the privileges of the House of Commons that on joint committees the members of that House must be double the number of the Lords.' 'It is now well understood that the numbers from each House serving on joint committees should be equal.' 'The committee believe that the appointment of a joint standing order committee would remove the inconvenience arising from a difference of opinion between the two Houses, which sometimes leads one House to reject a Bill, after a decision in the other House allowing the same to proceed. This scheme is very much facilitated by the fact that the standing orders of the two Houses are now practically identical.[n] This report, however, has not yet been considered by either House of Parliament.[o]

Sir Erskine May, in his evidence before this committee, warmly advocated this novel procedure of a joint committee on opposed private Bills. He said it was considered by a committee of the Commons in 1854, and had it been then introduced, 'would have saved the promoters and opponents of private Bills many millions in costs.' If this plan should be approved, it would be necessary, at the outset, to relax the privileges of the Commons, 'so that all private Bills could be introduced

[m] Com. Pap. 1868-9, v. 7, pp. 184-189. [n] *Ib.* p. 174.
[o] Hans. D. v. 207, p. 693.

indifferently into either House, according to the desire of the parties who petition.' He then proceeded to show, with great minuteness of detail, the probable advantages of this new machinery, and the mode of giving effect thereto, in both Houses.[p]

In 1872, Mr. Gladstone expressed a strong opinion in favour of joint committees of both Houses on private Bills. But Mr. Disraeli doubted the expediency of the proposal.[q]

In 1873 Bills for railway amalgamations of great magnitude were to come before Parliament, and it was agreed between both Houses, that such Bills should be referred to a joint committee. This arrangement did not at all involve the principle of referring ordinary railway or other Bills to a joint committee.[r] In 1876 a joint committee of both Houses was appointed to report on the expediency of making further regulations concerning the admission and practice of parliamentary agents.[s]

Adverting to the rule of the House of Lords that private Bills shall not be read a second time after a certain day, Sir Erskine May observed that 'it has certainly prevented any *lâches* on the part of the agents; they are very anxious to advance their Bills, but sometimes they are obliged to claim the indulgence of the House of Lords.' He very much questioned, however, whether it would be possible to introduce a similar system into both Houses with regard to public measures. 'Certainly it would not be possible as regards Government Bills: otherwise a Government Bill could be readily defeated by delay, and there are already more than sufficient obstacles to the progress of any Bill.'[t]

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[p] Com. Pap. 1868–9, v. 7, pp. 189, 199.

[q] Hans. D. v. 209, pp. 155, 156.

[r] *Ib.* v. 214, p. 886.

[s] *Ib.* v. 230, pp. 316, 1767. Certain rules, the most recent of which were sanctioned by the Speaker in March 1873, were in force in the House of Commons, though the House of Lords had no such rules (Com. Pap. 1876, v. 12, p. 541) until 1876, Hans. D. v. 231, pp. 3, 319, 1061. For an able criticism of these rules, see L. T. v. 62, p. 295.

[t] Com. Pap. 1868–9, v. 7, p. 199.

Utility of committees for legislation.

In view of the facts that the House of Commons in 1868 parted with its jurisdiction in election matters, that 'the number of private Bills has lately very much diminished,' and that if this scheme of joint committees should be entertained, the labour of private legislation will be further diminished, it has occurred to Sir Erskine May that an attempt might be made 'to utilise committees for the purpose of legislation.' It would be a pity that a very large body of members of both Houses, and especially of the Commons, 'should not be utilised in maturing public Bills,' and thus spare the whole House a considerable amount of labour, in discussing and amending or proposing to amend the wording of clauses. So far as this has already been done, it has proved advantageous, and the practice might be usefully extended. But he would only apply it to Bills of secondary importance, and with numerous details not involving important principles; and he would still retain the practice of passing all Bills through a committee of the whole House.[v]

On February 17, 1870, an informal discussion took place in the House of Lords in regard to the origination of public business in that House, and ministers promised that certain measures of law reform should be introduced therein, at an early date.[w]

On March 4, 1872, a similar informal debate arose in the Lords, but without any practical result.[x] The fact that for many years every 'liberal' government has been in a minority in the House of Lords is one special reason why they have refrained from initiating important legislation in that Chamber.

On April 24, 1871, it was proposed on behalf of government to bring in a Bill (for the suppression of crimes in Ireland) into the House of Lords, founded

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[v] Com. Pap. 1868-9, v. 7, pp. 200, 201.

[w] Hans. D. v. 199, p. 413-425.

[x] *Ib.* v. 209, p. 1298.

upon evidence taken before a select committee of the House of Commons, a copy of which was obtained by message. This was agreed to by the Lords.[y]

Assembling of Parliament.

The statutable provision in regard to the meeting of Parliament now in force merely requires that no longer a period than three years shall elapse between the determination of one Parliament and the issue of writs for another.[z] Nevertheless, by constitutional practice, the annual assembly of Parliament has become necessary. Supplies for the public service are voted annually, and the Acts for the control of the army and navy are limited in their duration to one year, and must be renewed before the expiration of that time.[a]

Opening of Parliament.

In order to give life and existence to a Parliament, and to enable it to proceed to the execution of its functions, the personal presence or delegated authority of the crown is required for the formal opening of the session. At the beginning of every new Parliament, and of every session after a prorogation, the cause of summons must be declared to both Houses, either by the sovereign in person, or by commissioners appointed to represent him, in a speech from the throne: until this has been done neither House can enter upon any business. The act of the Commons in choosing a Speaker is no exception to this rule, for they are specially empowered to make choice of a presiding officer by command of the sovereign, who refrains from making known the purpose for which Parliament has been convened until the Commons are completely organised, by the election of their Speaker.[b]

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[y] Hans. D. v. 205. p. 1548.

[z] 16 Chas. II. c. 1; 6 and 7 W. and M. c. 2. Hats. Prec. v. 2, p. 292. And see *post*, v. 2.

[a] May, Parl. Prac. ed. 1883, p. 659.

[b] 2 Hats. pp. 308, 327. And see Mir. of Parl. 1833, p. 1.

In 1874, a change of ministry having taken place after the general election, and before the meeting of Parliament, the House of Lords and the House of Commons (after their Speaker was chosen) adjourned, from March 9 to 19, before the delivery of the speech from the throne, the Lords Commissioners having declared 'Her Majesty's pleasure that an opportunity may now be given to issue writs for supplying the vacancies so occasioned, and that after a suitable recess, [both Houses might] proceed to the consideration of such matters as [would] then be laid before' them.[c]

Independence of Parliament.

But when once Parliament has been formally opened, by the declaration of the causes of summons, each branch of the legislature has a separate and distinct jurisdiction; and business may be entered upon by either House, in conformity with its recognised rules, usages, and customs, irrespective of the royal will and pleasure. It is an ancient and undoubted privilege of the two Houses of Parliament, after the speech from the throne has been delivered, to proceed upon any matter, at their discretion or convenience, without giving priority to the discussion of the topics included in the royal speech. As a deliberate assertion of this right, both Houses invariably read a Bill a first time, *pro forma*, before they enter upon the consideration of the speech; and there are many instances of their postponing the consideration of the same in favour of other business for one or more days.[d]

Communications between the crown and Parliament.

Formal communications between the sovereign and Parliament, in the shape of royal speeches or messages, and the interposition of the authority of the crown to effect the adjournment, prorogation, or dissolution of Parliament—which heretofore emanated from the mere personal will of the reigning monarch—are, under our present constitutional system, considered as the acts of the sovereign's responsible advisers. Ever since the introduction of ministers into Parliament, they have been

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[c] Hans. D. v. 218, pp. 15-22.
[d] 2 Hats. pp. 300. May, Parl. Prac. ed. 1883, p. 48.

held directly responsible for every exercise of the royal authority. The recognition of this principle has produced important changes in the relations between crown and Parliament. While the outward ceremonial remains unaltered, a greater harmony and freedom both of action and intercourse has been brought about between the executive and the legislature. The sovereign is no longer called upon to perform ungracious acts towards his Parliament, or held individually accountable for a policy which is distasteful to that august body. If Bills are introduced into either House that are disapproved of by the crown, the royal veto need not be invoked for their rejection; but after they have undergone the fullest and freest discussion, the constitutional influence of ministers generally suffices to control their fate.

The royal veto upon bills in Parliament has not been exercised for upwards of 150 years; nevertheless, its continued existence is undoubted, and circumstances might at any time arise that would justify the crown in resorting thereto.[c]

If it be necessary, on the other hand, to propose for the acceptance of Parliament the adoption of unpopular measures, ministers are at hand to explain and defend them, upon their personal responsibility. And if it be impossible to continue to carry on the government successfully without appealing from the House of Commons to the constituent body, ministers of the crown are themselves responsible for the act of dissolution.

Resolutions of Parliament.

The opinions of either House of Parliament are constitutionally expressed either by means of an address of advice or remonstrance to the crown, or by their agreement to a Bill to add to, alter, or repeal an existing law. But no mere resolution of either House has any legal validity, except in so far as it records the opinion of the House upon some matter which comes within the

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See *post*, v. 2.

sphere of its acknowledged authority, as a component branch of the legislature, to determine.

For example, either House of Parliament may resolve that its privileges have been infringed in a particular instance. But it cannot enforce a claim of privilege beyond the limits of acknowledged precedent, or by any assumption of privilege exercise unconstitutional powers;—or alter, suspend, or supersede the established laws of the land, so as to deprive the subject of any remedy or right provided for or conferred on him by law.

See the decisions of the Judges cited,[f] and the proceedings in the case of Stockdale *v.* Hansard, wherein the House of Commons laid claim to a privilege which the courts of law denied.[g] The matter was finally settled by the passing of an Act (3 & 4 Vict. c. 9), legalising the action of either House of Parliament in regard to the main question at issue. See also Sir Erskine May's evidence before a Committee of the House of Commons in 1869 on the mode of examining witnesses which treats of the 'well established rule of Parliamentary law that neither House of Parliament has power to claim any new privilege,' or to revive a power which has been long disused.[h]

Either House may declare the expediency of an alteration of the law in a given direction, but it can only give effect to its opinions by the regular method of parliamentary procedure—that is to say, by the introduction and passing of a Bill, which is assented to by the other branches of the legislature. No mere resolution of either House, or joint resolution of the two Houses, can override an Act of Parliament,[i] or dispense with its

Cannot dispense with an existing law.

[f] Thomas's Const. Law, p. 34. May, Parl. Prac. ed. 1883, c. vi.

[g] See 9 Ad. and Ell. p. 134. Arnould's Life of Denman, c. 26.

[h] Com. Pap. 1869, v. 7, p. 707. Hans. D. v. 196, p. 620; Mr. Disraeli, Hans. D. v. 217, p. 372.

[i] Hans. D. v. 203, p. 1115. And see debates upon a proposed new standing order, which was erroneously assumed to be in contravention of the provisions of an Act of Parliament, *ib.* v. 233, pp. 693, 1527. And see objection taken to a proposed resolution of the House of Lords, in a Scotch peerage case, that it was an infringement of the provisions of an Act of Parliament, Hans. D. v. 235, p. 957. And so the Board of Trade will not sanction a provisional order in which it is proposed to repeal any part of a general statute. See Com. Pap. 1877, v. 16, p. 605.

requirements, even although it may relate to something which directly concerns but one chamber of the legislature. Although provision is sometimes made by statute to declare a 'resolution of the House of Commons,'[j] or, a resolution of 'both Houses of Parliament,'[k] to be valid and effectual for confirming or allowing some act of government, which would not otherwise be legal. The effect of a parliamentary resolution in a matter of administration will be presently considered.[l] But, first, it will be expedient to notice certain cases explanatory of the principle above mentioned.

Jews in Parliament.

The House of Lords having repeatedly refused to agree to certain bills passed by the Commons for the admission of Jews to a seat in Parliament, in the year 1857 a select committee was appointed by the House of Commons, to consider whether the House had not the power of itself, under the Act 5 & 6 Will. IV., c. 62, to admit Jews to the privilege of membership, by substituting a declaration in lieu of the oath prescribed by law, which oath contained words ('upon the true faith of a Christian') that rendered it unsuitable to, and impossible to be taken by, a Jew. The committee was presided over by Lord John Russell, who, together with the attorney-general (Sir R. Bethell), was inclined to the opinion that the legal power to administer a declaration to a person objecting to take the oath was possessed by the House of Commons, although it was confessedly undesirable to use that power until all other constitutional remedies had been tried. Thus, in 1833, Mr. Pease, a Quaker, was admitted by the House to sit and vote, upon making affirmation instead of the oaths directed to be taken by law. This course was adopted upon a general construction of the statutes permitting Quakers to make affirmation in lieu of being sworn.[m] But the introduction of Jews into Parliament in a similar way would have been a violation of the principle of Christianity, as recognised in the statutes upon the subject of oaths. But the majority of the committee was against this opinion, whereupon the committee agreed to report to the House as follows:—'The following resolution was proposed by a member of the committee: That, in the opinion of this committee, the House of Commons is included

[j] As by Act 25 & 26 Vict. c. 78, sec. regarding contracts; see *post*, p. 493.

[k] As by Act. 21 & 22 Vict. c. 106, sec. 55, concerning the employment of Indian troops out of India. See *post*, p. 523.

[l] See *post*, p. 419.

[m] May, Parl. Prac. ed. 1883, p. 209.

within the following words of the 8th section of 5 & 6 Will. IV., c. 62, that is to say, "All bodies now by law, or statute, or by any valid usage, authorised to administer or receive any oath" [may make order, &c., authorising and directing the substitution of a declaration in lieu of any oath]. Upon deliberation, the resolution passed in the negative.'[n] Notwithstanding the able arguments made use of to induce the House to assert a claim to settle this controversy by its own act, and the eminent men by whom this claim was advocated, the House of Commons refrained from the attempt. But the probability that a continued resistance on this point might lead to a serious conflict between the two Houses, and possibly between the courts of law and the House of Commons, induced the House of Lords, in 1858, to pass a bill empowering either House to agree to a resolution admitting Jews to sit and vote, upon their taking a suitable declaration, in lieu of the oath imposed by law.[o] This compromise was agreed to by the other House, and the vexed question was thus finally determined, so far as the admission of Jews to a seat in the House of Commons was concerned.[p] No such resolution, however, was ever adopted by the House of Lords. Nevertheless, by an Act passed in 1866, the oath required to be taken by members of both Houses of Parliament was altered, so as to omit the words 'on the true faith of a Christian,' thereby rendering a Jew eligible for a seat in either House.[q]

Cattle. In 1866, when immediate legislation was called for, to stay the ravages of the cattle plague, and yet the question itself was beset with so many difficulties as to render it impossible for Parliament to agree to a measure without patient and careful consideration of the whole matter, it was suggested by the Earl of Derby, that general resolutions should be adopted by both Houses of Parliament, authorising the government to deal with the subject by orders in council, upon certain main principles to be laid down in the resolutions, such orders to remain in force until Parliament had matured a Bill upon the subject. But Earl Russell (the premier) and Earl Grey both objected that this would be a dangerous and unwarrantable proceeding. Accordingly, it was not pressed upon the consideration of the House.[r]

In 1876, the attention of the House of Commons was called to an unconstitutional practice which had

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[n] Com. Pap. 1857, Sess. 2, v. 9, p. 477; and see May, Parl. Prac. ed. 1883, p. 206.

[o] Hans. D. v. 151, p. 1372.

[p] 21 & 22 Vict. c. 49.

[q] 29 Vict. c. 19. Life of Sir F. Goldsmid, p. 62.

[r] Hans. D. v. 181, pp. 441–445, 503. See also the case of the Totnes, &c., Writs, Hans. D. v. 190, p. 574.

grown up, since 1868—in allowing referees, being paid officers of the House, appointed to serve as assessors or advisers upon private bill committees, the power of voting thereon, as though they were elected members of Parliament. The right of referees to sit on committees had been conferred, by a resolution of the House in 1868—which did not specify any power of voting; but such power had, in fact, been exercised ever since. Whereupon, on February 18, a select committee was appointed to enquire into the matter and particularly as to the legality and expediency of the exercise of the power of voting by the referees.[s] The committee reported their unanimous conclusion, that it was inconsistent with ancient parliamentary usage, and contrary to constitutional principle, to allow the referees the right of voting.[t] Whereupon it was ordered, that it be an instruction to committees on private bills, that referees, appointed to such committees, *may* take part in all the proceedings thereof, but without the power of voting.[u]

Abstract resolutions, objectionable.

In the ordinary course of procedure, resolutions of either House of Parliament should be the embodiment of well-ascertained opinions, or facts, as a basis or preliminary step towards some proximate parliamentary action. Mere abstract resolutions upon any question, while they are too commonly regarded as allowable weapons in the exigencies of party warfare, are open to grave objection. They are generally made use of to assert a principle, perhaps undeniable in itself, but which it would be impossible or inexpedient to carry out at the time. They have, accordingly, a tendency to fetter the present action of government, to precipitate the solution of great public questions, before they are ripe for settlement, and to impede the current of

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[s] Hans. D. v. 227, p. 485. [t] Com. Pap. 1876, v. 14, p. 4.
[u] Hans. D. v. 228, p. 616.

useful legislation. Upon these grounds the most eminent statesmen have concurred in condemning them.[v]

Thus in 1865, Mr. Gladstone said: 'I have never concealed my strong opinion that a resolution of this House, unless relating to a matter of grievance or recommending the reduction of a burden oppressive to the community, does not demand great consideration from the government.'[w] Again, in 1870, he observed, that 'as a rule, this House proceeds by Bill, and not by resolution. The framer of a Bill is under the necessity of thinking out and through all parts of his subject, and of presenting it to the House in such a manner as will bear testimony that he has thought it through and will give the House some means of judging whether his means are adapted and well proportioned to his ends.' Whereas, by an abstract resolution, 'we are called upon, at a moment's notice, to pledge ourselves irrevocably to the utterance of opinions which are subject to doubt and hesitation in every conceivable way, and which ought never to be entertained with a view to adoption unless they have been subjected to severe scrutiny.[x]

Prerogative of administration.

The prerogative that will first engage our attention is that which concerns the executive authority of the crown in the administration of public affairs. This prerogative is of such widespread and pervasive operation, as to include, in a certain sense, every other. Our remarks in reference thereto, and the authorities cited, will accordingly be of general application, and will contribute, it may be hoped, to the solution of any question that may arise out of the constitutional relations between the Crown and Parliament.

Our comments upon this prerogative in the subsequent chapters are divisible into four heads:—I. General principles which govern the relations between

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[v] Ld. Althorp and Ld. Stanley (Earl of Derby), Mir. of Parl. 1835, p. 682; Sir R. Peel, *ib.* 1840, p. 3524; Marq. of Lansdowne, Hans. D. v. 94, p. 177; Mr. Cardwell, *ib.* v. 125, p. 615; Mr. Disraeli, *ib.* v. 151, p. 125; *ib.* v. 214, p. 1031; Mr. Gladstone, *ib.* v. 161, p 1448. Any attempt to obtain from ministers a premature admission of the principles to be afterwards embodied in legislative measures is equally objectionable. See *ib.* v. 200, pp. 1130-1140.

[w] *Ib.* v. 178, p. 38; and see *ib.* v. 216, p. 730.

[x] *Ib.* v. 201, p. 522; and Mr. Grant Duff, *ib.* p. 843. See also *ib.* v. 211, p. 406.

ministers of the crown and the two Houses of Parliament in matters of administration, with precedents illustrative thereof. II. The practice of Parliament in the appointment of select committees to enquire into administrative questions. III. Practice in regard to the granting or withholding, by the executive, of information desired by either House of Parliament. IV. Circumstances which may require the interposition of Parliament to restrain the illegal exercise of executive authority: in relation (more specially) to (1) orders in council and royal proclamations; (2) minutes of committees of council, and other departmental regulations; (3) contracts entered into by public departments; (4) the remedy against illegal or oppressive acts by ministers of the crown.

CHAPTER VII.

1. General Principles which govern the Relations between the Crown and Parliament in Matters of Administration.

Parliament may advise the crown in any matter.

Freedom of speech in Parliament is an essential part of the liberties of Englishmen. This privilege was guaranteed by the Bill of Rights, and it includes a licence to discuss all matters affecting the public welfare, whether the same have been formally commended by the crown to the consideration of Parliament or not. From the time of Edward III. to our own day, Parliament has freely exercised the right of tendering advice to the sovereign, unasked, upon matters the final determination of which appertained to the sovereign alone. The House of Lords, as representing the ancient Great Council of the realm, always possessed this right; and after the House of Commons arose, its position, as the Grand Inquest of the kingdom, justified it in claiming similar privileges. The two Houses of Parliament collectively represent the whole community, and are the Great Council of the nation, while 'ministers are merely the council of the prince.'[a] They are, therefore, entitled to approach the sovereign with advice or remonstrance upon all affairs of state, and in regard to every grievance under which any subjects of the realm may be suffering. But it is equally necessary to remember that Parliament is designed for counsel and not for rule—for

[a] Rt. Hon. C. W. Wynn, Mir. of Parl. 1835, p. 1583.

advice, and not for administration. There are some prerogatives with the exercise of which the Houses of Parliament must ordinarily refrain from intermeddling, lest their intrusion should be equivalent to an unwarrantable interference with executive functions.

Free exercise of executive functions.

The true responsibility of ministers depends upon their freedom in exercising the lawful authority of the crown. Without freedom of action there can be no genuine responsibility. It is this which renders it so essential to the successful working of parliamentary government that ministers should be sustained by a predominant party in the legislature, who are prepared, on general grounds of public policy, to approve their acts, and to assume a measure of responsibility for their conduct in office.[b] De Lolme, in anticipating the events that would be likely to destroy the fair fabric of the English constitution, strikingly remarks that, 'when the representatives of the people shall begin to share in the executive authority,' the government will be overthrown.[c]

How controlled by Parliament.

Great weight must necessarily be attributed to the opinions of either House of Parliament on public affairs; but, under ordinary circumstances, those opinions are constitutionally expressed by the degree of support they consent to afford to the ministers of the crown in the conduct of the government. If the Queen's ministers possess the confidence of Parliament, it is inexpedient and unwise, as a general rule, to interefere with their decisions in regard to the details of administration, except in cases wherein it may appear that the public interests have been injuriously affected by the action of ministers.

The abstract right of Parliament, in this matter, has been asserted by the best constitutional authorities.

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[b] Ed. Rev. v. 108, p. 285.

[c] De Lolme, Const. pp. 439–450. And see Cox, Inst. p. 3.

Thus, Earl Russell says: 'The two Houses of Parliament constitute the Great Council of the king, and upon whatever subject it is his prerogative to act it is their privilege and even their duty to advise. Acts of executive government, however, belong to the king.'[d] And of the House of Commons Burke says: 'It is their privilege to interfere, by authoritative advice and admonition, upon every act of executive government, without exception.'[e] In 1784 the House of Commons resolved—in conformity with the report of a select committee to search for precedents on the subject:—'That it is constitutional and agreeable to usage for the House of Commons to declare their sense and opinions respecting the exercise of every discretionary power which, whether by Act of Parliament or otherwise, is vested in any body of men whatsoever for the public service.'[f]

Right of enquiry.

In 1788, on a motion for enquiring into the conduct of the Admiralty in a certain matter, Mr. Pitt (the prime minister), said: 'That the House had a constitutional power of enquiring into the conduct of any department of the government, with a view either to censure or punishment, was unquestionable; and whenever a case was made out strong enough to warrant a suspicion of abuse that deserved either censure or punishment, he should ever hold it to be the indispensable duty of the House to proceed to enquire.' Mr. Fox, on the same occasion, remarked, that 'it was the constitutional province and the undoubted duty of the House to watch over the executive departments, and where they had cause to suspect abuse, to institute an enquiry, with a view either to censure or punishment.'[g] In 1809, the irregular promotion of Lord Burghersh to higher military rank, contrary to the prescribed regulations, was complained of in the House of Commons, and notwithstand-

[d] Russell, Eng. Const. p. 151.
[e] Rowlands, Eng. Const. p. 498. See also Wynn, in Parl. Deb. N. S., v. 2, p. 369.
[f] Parl. Hist. v. 24, pp. 534-571.
[g] *Ib.* v. 27, pp. 277, 281.

ing the claim of the secretary for war (Lord Castlereagh) that 'it was part of his Majesty's prerogative, as the undoubted head of the army, to dispense with his own regulations when he thought proper;' it was insisted, on the part of Lord Temple, that 'the House of Commons had over that, as well as over every other branch of the royal power, a privilege to enquire and control.' Whereupon, on a division, ministers were defeated, and compelled to cancel the objectionable promotion.[h]

It is now an acknowledged principle that 'every act done by the responsible ministers of the crown having any political significance is a fit subject for comment and, if necessary, for censure in either House of Parliament.'[i] The House of Commons, says May, 'has a right to advise the crown even as to the exercise of the prerogative itself; and should its advice be disregarded it wields the power of impeachment, and holds the purse-strings of the state.'[j]

Rights of the Commons to advise the crown

In like manner, Canning defined the House of Commons to be a council of control, as well as a council of advice; and declared that in cases of adequate importance, especially where the prerogative was concerned, it should endeavour, by the timely interposition of advice, to prevent the necessity of control.[k]

But it is evident that these extraordinary powers of interference ought not to be evoked except upon special necessity; as a general principle, Parliament should confide in the discretion of the responsible advisers of the crown, who are the trustees of the royal prerogative for the rightful administration of the same. So long as Parliament continues its confidence in ministers, it ought to be willing to leave the exercise of the prerogative in their hands, unfettered by restrictions in regard to its exercise, and should ordinarily refrain from interference

When necessity requires.

[h] Fonblanque, Life of Gen. Burgoyne, p. 458, n.

[i] Earls Derby and Russell, Hans. D. v. 171, pp. 1720, 1728.

[j] May, Const. Hist. v. 1, p. 458.

[k] Parl. D. v. 23, p. 267.

therewith. The general responsibility of ministers for the wisdom, policy, and legality of the measures of government should be sufficient guarantee, in all ordinary cases, for the faithful discharge of the high functions entrusted to them. In fact, 'the ministry of the day are responsible for everything that is done in any department of the state;' and while 'it is true that the House of Commons ought to have a control and supervision over every such department, its functions are those of control, not of administration.'[1] 'The House can interfere with great advantage in prescribing *the principles* on which the executive government shall be carried on; but beyond that it is impossible for the legislature to interfere with advantage in *the details* of the administration of the country.'[m]

Defects in the Commons.

Mr. Frederic Harrison, in an essay,[n] points out the ominous defects recently apparent in our system of government by Parliament. He shows that the peculiar character of the House of Commons as 'the aristocratic public council of a governing class was put an end to by the Reform Bill of 1831.' That since then, the House has gradually, and insensibly, but 'practically usurped executive functions, and really has become the executive.' Its existing constitution and methods are totally incompatible with the efficient discharge of such functions. He suggests as a remedy (1) that the question must be settled, 'Is the House of Commons the proper body to carry on the executive of this vast empire, or directly to control the executive in all the minutiæ of business?' If these functions are still to be exercised, 'there is no half-way house between the present dead-lock and the transfer of all details of Bills to a complete system of Revising Committees,' consisting of between ten and twenty members each—and other business to properly constituted standing committees. Besides this reform, in favour of which he urges some weighty reasons, it is imperative to curtail and revise the great and growing abuse of 'questions to

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[1] Palmerston, Hans. D. v. 150, p. 1357; and *Ib.* v. 164, p. 999. And see Prof. Austin's observations on this point, *Plea for the Constitution*, p. 24.

[m] Cobden, Hans. D. v. 176, p. 1909. See also Earl Russell's observations in his Life of Fox, v. 3, p. 311; Rep. Com^s. Board of Admiralty; Coms. Pap, 1861, v. 5, pp. 335, 363; Evid. 2612, 2905; Fitz James Stephens on Parl. Govt. in Con. Rev. v. 23.

[n] 19th Cen. v. 10, p. 317.

ministers,' which now occupy an enormous and greatly disproportionate amount of time and attention. Some effectual means must also be devised to put an end to excessive and unprofitable debate, on any and every subject. Proceedings on public Bills must not be put an end to by the close of a session, and private Bills must be largely transferred to other tribunals.

The New Rules, passed in the autumn session of 1882, were not designed merely to suppress obstruction, but to facilitate the progress of public business. To effect this it was deemed necessary 'to curtail the legitimate rights of the Opposition, and to introduce novel machinery into the ancient practice of Parliament.'[o]

Interference by Parliament in details of government.

Any direct interference, by resolution of Parliament, in the details of government is inconsistent with and subversive of the kingly authority, and is a departure from the fundamental principle of the British constitution, which vests all executive authority in the sovereign, while it ensures complete responsibility for the exercise of every act of sovereignty. Experience has uniformly demonstrated the unfitness of large deliberative assemblies for the functions of government. The intrusion of parliamentary committees into matters which appertain to the jurisdiction of the executive government is equally to be deprecated, as it tends inevitably to the overthrow of all genuine responsibility, and the substitution instead of an arbitrary tyrannical power.[p] During the reign of Charles I. the Long Parliament assumed, on the part of its committees, various executive functions; but this is admitted to have been a usurpation, and it is now acknowledged without dispute that all acts of administration belong exclusively to the crown.

Parliament does not interfere directly in carrying on the executive government; the supreme executive authority belongs to the crown, nor do the measures adopted by its ministers in the exercise of this authority require the previous sanction of Parliament.[q]

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[o] See Mr. Curtis's paper on the New Rules, Fort. Rev. v. 33, p. 19.

[p] See the injurious operation of Standing Com[s] in the U S. Congress, North Am Rev. v. 118, p. 12.

[q] Grey, Parl. Govt. new ed. p. 22 and p. 9, *n*. See Sir C. Wood, Hans. D. v. 175, p. 259. And see a curious case cited *ante*, p. 370.

Interference of Parliament.

Accordingly, no resolution of either House of Parliament which attempts to adjudicate in any case that is within the province of the government to determine—or, to define the mode in which any prerogative of the crown should be exercised—has of itself any force or effect.[r] If it be intended merely to express the sense of the House upon some objectionable system, practice, or act of administration, or to complain of an existing grievance and suggest a remedy, Parliament is perfectly competent to entertain and pass a resolution on the subject, or to approach the crown, by address, with advice upon the same. It then becomes the duty of the government to give respectful consideration to the matter, but nevertheless to decide upon the course to be followed on their own responsibility. Sometimes, indeed, the government themselves invite the assistance of Parliament to institute, by means of select committees, enquiries into questions of administration, for the purpose of obtaining the fullest information to enable them to accomplish some desirable reform; or express their willingness to be guided in a particular matter by the general sense of parliamentary opinion. But where the government deprecate interference, or refuse to concur in any such recommendation, the persistence of the House therein would either amount to an infringement of the royal prerogative, or it would be tantamount to a vote of censure upon the existing administration. And it would be highly irregular to confer supervisory or administrative duties in matters of public concern upon private members of either House of Parliament.[s]

Limits of parliamentary control.

'The limits,' says May, 'within which Parliament, or either House, may constitutionally exercise a control over the executive government have been defined by usage upon principles consistent with a true distribu-

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[r] See *post*, pp. 506, 507. [s] Hans. D. v. 234, p. 1785.

tion of powers in a free state and limited monarchy. Parliament has no direct control over any single department of the state. It may order the production of papers for its information; it may investigate the conduct of public officers and may pronounce its opinion upon the manner in which every function of government has been or ought to be discharged; but it cannot convey its orders or directions to the meanest executive officer in relation to the performance of his duty. Its power over the executive is exercised indirectly, but not the less effectively, through the responsible ministers of the crown. These ministers regulate the duties of every department of the state, and are responsible for their proper performance to Parliament as well as the crown. If Parliament disapprove of any act or policy of the government, ministers must conform to its opinion or forfeit its confidence. In this manner the House of Commons, having become the dominant power of the legislature, has been able to direct the conduct of the government and control its executive administration of public affairs, without exceeding its constitutional powers.'[t]

Encroachment of the Commons.

Since the passing of the Reform Act of 1867, the House of Commons has shown a disposition to encroach, more and more, upon the sphere of government. It now 'claims to have a voice in every subject before it is decided. By means of questions proposed to ministers, which have enormously multiplied in number and importance within the last few years, it controls and directs the course of administration to a degree never dreamt of for many years after the [first] Reform Bill.'[u]

Minister accountable to Parliament.

'Every measure of the ministers of the crown,' says Lord Grey, 'is open to censure in either House; so that when there is just or even plausible ground for

[t] May, Const. Hist. v. 1, p. 457.
[u] Mr. Lowe, M.P., Fort. Rev. v. 22, p. 414.

objecting to anything they have done or omitted to do, they cannot escape being called upon to defend their conduct. By this arrangement, those to whom power is entrusted are made to feel that they must use it in such a manner as to be prepared to meet the criticisms of opponents continually on the watch for any errors they may commit, and the whole foreign and domestic policy of the nation is submitted to the ordeal of free discussion.' [v]

The following cases may be adduced in illustration of the foregoing doctrine. They are entered in chronological order, a rule which will be generally observed in the series of precedents hereinafter quoted :—

Precedents.

Reversions.

In 1807 a Bill to abolish reversions was passed by the House of Commons, but failed to receive the sanction of the House of Lords : whereupon, on August 10, just before the prorogation, the Commons agreed to an address, *nem. con.*, that his Majesty would be graciously pleased not to grant any office in reversion in any part of the empire until six weeks after the commencement of the next session of Parliament. To this request the king returned a favourable answer. In the following session a new Bill to suspend the granting of offices in reversion for a limited time was brought in, and received the royal assent (48 Geo. III. c. 50). By two subsequent Acts (50 Geo. III. c. 88, and 52, c. 40) the grant of offices in reversion was suspended for a further period. But the House of Lords, in 1814, continuing to oppose the permanent abolition of reversions, ministers resisted a motion for an address similar to that voted in 1807, asserting that 'its object was an innovation of the constitution, and an exclusion of the House of Lords from their share in the legislature,' which 'might place the crown in a contradictory relation to each of the two Houses.' The motion was accordingly negatived.[w] But in deference to public opinion, and to repeated (though unsuccessful) motions on the subject, in both Houses, between the years 1815 and 1819, ministers afterwards abstained from advising the grant of places in reversion, and the exercise of this prerogative is now formally abandoned.[x]

In 1836, on motion of Lord John Russell, then chancellor of

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[v] Parl. Govt. p. 20.

[w] Parl. D. v. 28, pp. 634, 792.

[x] *Ib.* v. 31, p. 881 ; v. 38, p. 1253 ; v. 39, p. 386. Gen. Index Com. Jour. 1801–1820, p. 600. Sir R. Peel, in Rep. on Off. Salaries, Com. Pap. 1850, v. 15, p. 230.

the exchequer, the House of Commons passed an address to the king, that he would be pleased to take steps for the effectual discouragement of Orange lodges, and generally of all secret societies. This led to the immediate formal dissolution of the great Orange Society of the United Kingdom.[y] But it was afterwards re-established, with a different set of rules.[z]

Precedents.

Orange lodges.

On May 22, 1838, a resolution was carried against the government, by a majority of three, in favour of the 'immediate' termination of negro apprenticeship in the colonies.[a] The government declined to take any action in carrying out this resolution, and intimated their intention of opposing any Bill that might be introduced to give effect thereto:[b] whereupon the mover of the resolution declined to take any further action in the matter for the time being, but reserved his right to do so whenever he should think fit, leaving the resolution meanwhile to speak for itself.[c] This induced the government, on May 28, to submit to the House a motion that, for certain alleged reasons, 'it is not advisable to adopt any proceeding for the purpose of giving effect to the resolution of May 22.' After a long debate, this motion was agreed to by a majority of 72.[d]

Negro apprentices.

On February 18, 1839, Mr. Duncombe presented a petition to the House of Commons from the lessee, &c. of Drury Lane Theatre, complaining of the restrictions imposed by the lord chamberlain forbidding theatrical performances in the city of Westminster on Wednesdays and Fridays during Lent. He then proposed an address to the Queen, that she would be pleased to direct the removal of these restrictions. This was opposed by government, and after a short debate, was negatived on division. However, on February 28, Mr. Duncombe moved to resolve that, in the opinion of the House, the continuance of these restrictions was objectionable. Lord John Russell, on behalf of the government, deprecated an attempt by the House to declare by a resolution in what manner a discretionary power vested in an officer of the crown should be performed; but, notwithstanding, the resolution was agreed to on division.[e] Subsequently Mr. Duncombe complained that this resolution had been disregarded by government, and moved for correspondence on the subject, which was granted.[f] He then proposed (on March 11) a vote of censure on the Queen's ministers for

Theatres in Lent.

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[y] Mir. of Parl. 1836, pp. 300, 340. Ann. Reg. 1836, p. 19. And see *post*, p. 537.

[z] Hans. D. v. 186, pp. 856-887; v. 195, p. 506.

[a] Mir. of Parl. 1838, pp. 4202-4218.

[b] *Ib.* pp. 4221, 4244.

[c] *Ib.* p. 4324.

[d] *Ib.* p. 4431.

[e] *Ib.* 1839, p. 625.

[f] *Ib.* p. 806.

Precedents.

assuming the responsibility of directing the lord chamberlain (who was authorised by statute to regulate theatrical entertainments in Westminster) to continue his obnoxious restrictions in manifest disregard of the resolution of the House. In reply, Lord John Russell justified the course he had pursued, declaring that, 'with every respect for the resolutions of the House, he was far from supposing that they could supersede the law of the realm, or dispense with the prerogative of the crown.'[g] The proposed vote of censure he regarded as quite uncalled for. The proper course would have been for the mover of the resolution to have followed it up with an address to the crown, which, if agreed to by the House, would have brought the matter under the notice of government, and necessarily elicited a reply; or he might have introduced a Bill into the House to carry out the principle embodied in the resolution. His lordship added, that the general question of licensing entertainments was under the consideration of government, and that some change in the present arrangements might hereafter be made.[h] After some further debate, the motion of censure was put and negatived. Before the commencement of Lent in the ensuing year, the lord chamberlain issued a new order, allowing all theatres under his jurisdiction to be open during Lent, except on Ash-Wednesday and in Passion-week. An astronomical lecturer, heretofore in the habit of lecturing during Passion-week at the theatres, petitioned the House, complaining that the new order prevented the continuance of his lectures: whereupon Mr. Duncombe moved an address to the Queen, that she would be pleased to direct that 'astronomical lectures' should be exempted from the operation of the new order. This motion, though opposed by the government, was agreed to on a division.[i] But no answer to the address was communicated to the House. Up to 1861, the theatres under the jurisdiction of the Lord Chamberlain,—which has been extended by the Act 6 & 7 Vict. c. 68, to the whole metropolis,—were closed for dramatic performances during Passion-week. In consequence, however, of strong representations from the managers of the hardship inflicted on them by restrictions placed on no other class of the community, the limitation clause as to Passion-week has been since omitted, always excepting Good Friday; and the question of opening in that week is now left to the discretion of the managers.[j] At present, it is only on Sundays, Christmas Day, Ash Wednesday, and Good Friday, that theatres and music halls are

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[g] Mir. of Parl. 1839, p. 987.

[h] *Ib.* pp. 987, 988.

[i] *Ib.* 1840, pp. 2482-2485. And see T. S. Duncombe's Life, v. 2, pp. 34 39.

[j] Rep. Com^s. on Theatrical Licences, Com. Pap. 1866, v. 16, p. 299.

forbidden to be opened.[k] But as regards Ash Wednesday, the prohibition is not strictly enforced.[l] Precedents.

On March 22, 1842, a series of resolutions were proposed in the House of Commons, by Sir Charles Napier, in favour of the selection of naval officers, instead of civilians, as members of the Admiralty Board, and in favour of naval civil situations being filled by professional men. Sir Robert Peel, the prime minister, moved the previous question, and refused, as a minister of the crown, to make any promise as to what he would do in the matter; because, he added, 'it must be reserved as the prerogative of the crown, and I altogether protest against the House of Commons laying any restrictions upon the exercise of the royal prerogative with regard to any branch of the public service.' After some further debate the previous question was put and negatived.[m] Admiralty Board.

On May 30, 1850, on motion of Lord Ashley in the House of Commons, an address to the Queen in favour of the total cessation of Sunday labour in the post-offices of the United Kingdom was agreed to. The ministry, though disapproving of the plan, advised her Majesty to comply with the wishes of the House.[n] [The majority in favour of this address is said to have been obtained owing to the absence at a court ball, of many members who would have opposed it.[o]] Much public inconvenience resulted from this decision; accordingly, arrangements were entered into by newspaper agents and others for a general delivery of mailable matter on Sunday, which involved the employment of many extra hands on that day. Whereupon, on July 9, the House passed another address to a contrary effect, expressing an opinion in favour of a partial delivery of letters and papers through the Post-office on the Lord's Day. To this address her Majesty returned a favourable reply.[p] Sunday labour in the Post-office.

On April 18, 1871, a private member of the House of Commons moved a resolution condemning the employment of letter carriers and rural messengers in the delivery of letters throughout the United Kingdom on Sundays. The prime minister (Mr. Gladstone), admitting that the adoption of this motion 'would demand obedience from the executive government,' moved an amendment in favour of an official inquiry into the practicability of a further reduction of Sunday labour in the service of the Post-office—which was accepted, and agreed to by the House.[q] Whereupon a departmental committee of enquiry was appointed, upon whose report

[k] Hans. D. v. 224, p. 469.

[l] *Ib.* v. 200, p. 1022; v. 222, p. 1279. See further, L. T. v. 74, p. 2.

[m] Hans. D. v. 61, pp. 1061–1070. See further on this subject, *post*, pp. 534, 543.

[n] *Ib.* v. 111, pp. 484, 980,

[o] Ed. Rev. v. 120, p. 74.

[p] Hans. D. v. 112, pp. 1215, 1375. And see v. 113, p. 1077.

[q] *Ib.* v. 205, pp. 1259 1280.

Precedents.

revised instructions were issued by the postmaster-general on the subject.[r]

Education in Ireland.

On June 17, 1856, an address to the Queen, in relation to education in Ireland, was passed by the House of Commons unexpectedly, and in opposition to the wishes of the government, by whom it was considered as tending to the subversion of the system of national education in operation in that country. By consent of the government, an opportunity was afforded to the House to reconsider the subject before the Queen's reply to the address should be given;[s] and a counter-resolution, expressing a decided opinion in favour of the maintenance of the existing system of Irish education, was agreed to.[t] In the course of the debate, Lord John Russell commented on the embarrassment resulting from the rule of the House permitting an address to be passed upon one deliberation; and said that he had been quite prepared to move for the rescinding of the vote, but was willing to accept the proposed resolution as a satisfactory equivalent.[u] On June 26 the Queen's reply to the address was sent down. It expressed an earnest desire to maintain the established system of education in Ireland, and a readiness to give to the wishes and recommendations of the Commons the consideration to which they were entitled.[v]

Site of National Gallery.

On June 27, 1856, an address to the Queen for the issue of a royal commission to determine the site of the new National Gallery was carried against ministers, and contrary to the wishes of the principal leaders of the Opposition.[w] Whereupon the commission was issued by the crown.[x]

Fortifications.

In the session of 1860, upon the recommendation of the crown, the sum of two million pounds was granted by Parliament towards the construction of works for the defence of the royal dockyards and arsenals, and of the ports of Dover and Portland, &c. The entire cost of these fortifications, as originally estimated, was somewhat over five million pounds. But before they were completed their estimated cost amounted to 7,460,000*l.* Foremost in this great scheme of national defence was the construction of fortifications at Spithead, a roadstead in the vicinity of Portsmouth. Under the influence of the excitement occasioned by the news from America of the contest between the ironclad war-vessels, the *Merrimac* and the *Monitor*, the House of Commons, on April 4, 1862, resolved 'that it is expedient to suspend the construction of the proposed forts at Spithead until the value of iron-roofed gun-

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[r] Com. Pap. 1872, v. 36, p. 338.

[s] Hans. D. v. 142, pp. 1666, 1827.

[t] *Ib.* pp. 1836, 1884.

[u] *Ib.* p. 1862.

[v] *Ib.* p. 1902.

[w] *Ib.* p. 2154.

[x] *Ib.* v. 143, p. 510. And see *ib.* v. 171, pp. 261, 515.

boats, for the defence of our ports and roadsteads, shall have been fully considered;' and that on a future day (named) the House would go into committee to consider of authorising the funds appropriated for the construction of forts to be expended in building ironclad ships. (This committee, however, never sat, the order respecting it being allowed to drop.)[y] Meanwhile, in deference to the foregoing resolution, the government suspended the works at Spithead, although they thus incurred a heavy expense in indemnifying the contractors for losses sustained thereby. They also referred the question to the consideration of the Defence Commissioners, upon whose report they determined to suspend the further prosecution of the works until the result of certain experiments had been ascertained.[z] Adverting to the delay and expense attending this course, Lord Palmerston (the prime minister) took occasion to remark, 'that when the House of Commons takes into its own hands administrative details, and takes them out of the hands of the executive government, the probability is that such a course will be attended with increased expense and diminished efficiency.'[a] But as the Government had merely consented to defer for a while and not to abandon the system of fortifications they had decided upon in 1860, another resolution was proposed, on June 23, 1862, as an amendment to a motion for the grant of a further sum in aid of the construction of fortifications: 'That considering the changes and improvements now in progress affecting the science of attack and defence, it is not at present expedient to proceed with the construction of the proposed forts,' &c.; 'and that in any general system of national defence this House is of opinion that the navy should be regarded as the arm on which the country must mainly depend.' After some debate this amendment was withdrawn, and the original motion put and agreed to.[b]

Precedents.

On August 9, 1867, upon a Bill to grant additional supply for the fortifications, it was moved to resolve that it is inexpedient to proceed further with these works, until sufficient experiments had been made to test the principles upon which it was proposed to construct them. The motion was withdrawn as the government undertook that experiments should be made to test the efficiency of the War Office plans.[c] The result of these experiments was afterwards

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[y] See Smith's Parl. Rememb. 1862, p. 130. For change in the opinion of the House in regard to iron-plated wooden ships, see debates on Mr. Lindsay's motions, Feb. 26 and Mar. 12, 1863.

[z] Hans. D. v. 167, pp. 879, 883.

[a] *Ib.* v. 166, p. 1281. See debate (Hans. D. v. 169, p. 1333) on a motion that 'it is not expedient to commence at the present time building wooden ships which are to be cased with iron armour-plates;' and Lord Palmerston's observations thereon, *Ib.* v. 169, p. 1385. The motion was negatived.

[b] Hans. D. v. 167, pp. 907-964.

[c] *Ib.* v. 189, p. 1289.

Precedents.

communicated to Parliament.[d] Meanwhile another attempt was made, on May 8, 1868, to induce the House of Commons to interfere to suspend these works until after further enquiry, but it proved unsuccessful.[e] But in 1869 an Act was passed granting a final sum to complete works in progress of construction, and authorising the abandonment of works already sanctioned by Parliament which had not been yet commenced.[f] In 1882, after nearly the whole sum authorised to be borrowed had been raised, the Fortification Acts were repealed, and a small unexpended balance repaid to the National Debt Commissioners in accordance with the provisions of 45 & 46 Vict. c. 72, sec. 20.

II. Practice of Parliament in the Appointment of Select Committees to enquire into Administrative Questions.

Select Committees on public questions

Of late years it has become a frequent practice in both Houses of Parliament to appoint select committees to take evidence, and report upon important public questions, upon which precise information is needed, with a view to legislation.[g] It is also desirable, and in accordance with constitutional practice, that select committees should be appointed, from time to time, to examine into the constitution and management of the various departments of state.[h] But Parliament is sometimes invited to institute enquiries, by a select committee, into matters which are strictly within the province of the executive government to determine; a proceeding which tends to shift the labour and responsibility of administrative functions more and more from those to whom it properly belongs; and to increase, in equal proportion, the power and influence of the House of Commons in details of government.[i] Committees of

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[d] Hans. D. v. 193, p. 1428.

[e] *Ib.* v. 191, p. 2021; and v. 193, pp. 1426 1439.

[f] Act 32 & 33 Vict. c. 76; and Hans. D. v. 203, p. 1311.

[g] Hans. D. v. 214, p. 1116.

[h] Mr. Gladstone, *Ib.* v. 203, p. 1613. And see *post*, v. 2.

[i] See the objections taken to the appointment of a committee of enquiry into the existence and best means of suppressing unlawful combinations in Ireland, which nevertheless was agreed to. But the order

enquiry, however, ought not to be appointed to consider questions of principle, upon which the House has not yet agreed to legislate. Such questions should be reserved for discussion by the House itself. It is only when a question is open, that it is suitable for enquiry by a select committee.[j] Select Committees.

When restricted in their enquiries within constitutional limits,[k] select committees are often very serviceable, in bringing members to a common agreement upon great public questions upon which legislation, founded upon an impartial investigation of facts, is necessary.

Nothing is more remarkable than the tender forbearance with which the House of Commons treats its own select committees; though, if their proceedings were strictly canvassed, there are perhaps few parts of our system of government which can less support criticism. As a means of enquiry and investigation, they are of the highest value, and they are constantly carrying on, with great success, the political education of Parliament and of the nation: but when they strain at executive authority they generally fail, nor can their judicial impartiality (except in peculiar cases) be entirely relied on.[l]

Such committees are usually appointed either at the suggestion or with the direct approval of the government, and are composed of a fair proportion of leading men from both sides of the House, including members of the existing and of former administrations, in order that, as a general rule, the balance of parties may be maintained, and the feeling of the House represented thereon.[m] In the appointment of select committees, it

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of reference was afterwards discharged, and another order substituted, more in accordance with constitutional precedent. See Com. J. 1871, pp. 66, 73. In regard to the appointment of committees of enquiry into misconduct or abuses in ministerial departments, see *post*, v. 2.

[j] Mr. Forster and Sir M. H.-Beach, Hans. D. v. 233, pp. 1753, 1825.

[k] See Mr. Disraeli, on this point, in Hans. D. v. 161, pp. 1866-1868; by Mr. Cobden, *Ib.* v. 176, p. 1908; by Mr. Lowe, *Ib.* v. 182, p. 158.

[l] Ed. Rev. v. 108, p. 290. For a humorous description of the manner in which such committees are sometimes organised, extracted from the Sat. Rev., see Fischel, p. 470.

[m] Hans. D. v. 202, p. 596.

Select Committees

is the usage that a majority of one should be given to that side which possesses the majority in the House itself. But it is not customary 'that minute attention should be paid to the representation of the three kingdoms.'[n] Men should be selected to serve on public committees who, from their abilities, experience, or the special interests they represent, are peculiarly qualified for such service.[o]

Very few committees are appointed without a conference between their principal promoters and the government. If intended to investigate matters of great importance, the leaders of different parties in the House should also be consulted by the mover, before he selects the members to serve thereon. The names of the proposed committeemen are usually arranged in friendly conversation out of the House, and with the assistance of 'the whips' on both sides. If this cannot be done, the House must decide, in some impartial manner, of whom the committee shall consist.[p] When the conduct of a minister or other official is in question, the government should take as little part as possible in the matter, and in the nomination of the committee should be guided by the general feelings of the House.[q] And when the character of a member of the House is concerned in the proposed enquiry, it is customary for the committee to be selected through the intervention of an intermediate body.[r]

As a rule, 'strong partisans on each side are knowingly and advisedly chosen, in order that truth might be elicited from the conflict of opposite and, it might be, interested opinions. If such committees consisted wholly of impartial men, their investigations would be most unsatisfactory.'[s]

After taking evidence from every available source,

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[n] Mr. Gladstone, Hans. D. v. 199, p. 795; v. 204, p. 1112; v. 206, p. 1117; v. 209, p. 1120.

[o] *Ib.* v. 195, p. 124.

[p] Disraeli, Hans. D. v. 137, pp. 1613, 1620, 1691. *Ib.* v. 187, p. 1498; v. 227, p. 2018; v. 234, p. 187.

[q] Gladstone, *Ib.* v. 216, p. 1214.

[r] Hans. D. v. 123, p. 751. *Ib.* v. 216, p. 1449.

[s] Secy. Sir G. C. Lewis, Hans. D. v. 162, p. 1012; and see *Ib.* v. 187, p. 1364. But in 1872 it was considered desirable to exclude any direct representation of railway companies upon a Sel. Comte. which had to enquire into the subject of the Amalgamation of Railway Companies. *Ib.* v. 209, p. 944.

the committee reports the same to the House, generally with observations embodying practical suggestions, which they submit for the consideration of the government. It then becomes the duty of the administration to consider these propositions, to subject them in turn to careful scrutiny—and, if necessary, to appoint either a royal commission, or a departmental committee of their own, to make further enquiries—in order to enable the government to decide, upon their own responsibility,[t] to what extent, and in what way, the proposed reforms can be carried out, in conformity with the general principles upon which the public service is conducted.[u]

Select Committees.

As a general rule, it is not customary to submit to the House motions for concurrence in the reports of such select committees, or any other resolutions founded thereupon. It is usual to leave with the government the initiation of any measures, be they legislative or administrative, that may be required to carry out the recommendations of a public committee.[v] Sometimes, however, a member of the committee (usually the chairman) submits to the House an abstract resolution on the matter—either in the same,[w] or in some succeeding session,[x] in order to enforce the recommendations of the committee, or to elicit the views of the House upon the subject.

Result of their enquiries.

In illustration of the principles upon which it is usual to appoint public committees, of the proceedings

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[t] Hans. D. v. 235, pp. 1478, 1725.

[u] Rep. Com^e. Diplomatic Service, Com. Pap. 1870, vol. 7, pp. 420, 421. Ev. 1767-1770. *Ib.* 2nd Rep. 1871, v. 7, p. 359. Hans D. v. 161, pp. 496, 817; *Ib.* v. 168, pp. 626 633; v. 173, p. 1239; v. 235, p. 1478. In 1850 the Commons addressed the crown to appoint a commission to follow up certain enquiries instituted by a Sel. Com^e. Com. J. v. 105, p. 85.

[v] Hans. D. v. 201, p. 431; v. 203, p. 1277; v. 226, p. 789.

[w] Holyhead Harbour, Hans. D. v. 172, p. 1330.

[x] Anchors and Chains, Merchants' Service, Hans. D. v. 164, pp. 235-242 Medical Officers in Unions (Ireland), *Ib.* v. 177, p. 1516; Bankruptcy Act of 1861, *Ib.* v. 179, pp. 420, 1109. Royal Dockyards, *Ib.* v. 190, p. 2034. Naval Cadets, *Ib.* v. 206, p. 2011.

Select Committees.

consequent upon their labours, and of the conduct of government in respect to the same, the following cases may be consulted:—

Precedents.

Opening letters at Post-office.

On June 14, 1844, Mr. Duncombe presented a petition to the House of Commons from four persons, of whom Joseph Mazzini, the well-known Italian refugee, was one, complaining that their letters had been detained at the London post-office, broken open, and read. The home secretary (Sir James Graham) explained that Mazzini's letters only had been opened; and that this had been done by his express authority, under a warrant issued in conformity to an Act of Parliament. On June 24, Mr. Duncombe moved for a select committee to enquire into the operations of the Post-office Department in such cases. The motion was successfully opposed by government, on the ground that they had merely exercised a right which had been constantly resorted to by their predecessors in office, and which had proved advantageous to the public interest, in the prevention and detection of crime. But on July 2, Mr. Duncombe again moved for a committee of enquiry; in amendment to which Sir James Graham himself proposed the appointment of a secret committee, to investigate the law in regard to the opening of letters, and the mode of its exercise—which was agreed to by the House. On July 4 a similar committee was appointed by the House of Lords. These committees were composed of some of the most eminent and impartial men in Parliament. A motion to include Mr. Duncombe upon the Commons' committee was negatived upon division.[y] Mr. Duncombe afterwards complained to the House, that while he had been invited to attend the committee to prefer his complaint against the home secretary, and to give in a list of witnesses in support of the same, he was not permitted to be present himself during the examination of witnesses. He then moved that it be an instruction to the committee to allow him to attend, and produce and examine witnesses in support of the case of the petitioners: but the motion was negatived. A motion to add Mr. Duncombe to the committee was ruled out of order by the Speaker, on the ground that a similar motion had been already negatived by the House.[z] After due investigation, these committees reported. They entirely exonerated Sir James Graham from blame in the discharge of his duty, and gave full particulars of the origin and exercise of the power of opening letters entrusted by statute to the secretary of state. They recommended no alteration of the law on this subject.[a] A few days afterwards, Lord Radnor introduced into the House of Lords a Bill to

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[y] Hans. D. v. 76, p. 257.
[z] *Ib* v. 76, pp. 1010–1024.
[a] Com. Pap. 1844, v. 14, pp. 501, 505.

abolish the right of opening letters, but it did not proceed beyond a first reading:[b] so that the secretary of state still retains his accustomed authority whenever he may deem it advisable to exercise it.[c]

Select Committees. Precedents.

Cathedrals.

On June 16, 1841, a select committee of the House of Commons, appointed to enquire into the present state of the national monuments and works of art in Westminster Abbey and in other public edifices, reported an opinion in favour of the opening of the English cathedrals, daily, to the public, for the inspection of their architectural beauties. On April 16, 1844, a motion was made to approve of this recommendation. Sir Robert Peel (the prime minister), while expressing himself favourable to the free admission of the public to such edifices, nevertheless opposed this motion as an attempt, by a mere resolution of the House, to control the lawful guardians of these institutions, who possessed rights independent of the House as an encroachment on the liberties of the people, and a dangerous endeavour to effect, by inadequate means, that which, if desirable, should be made the subject of legislation. The motion was accordingly withdrawn.[d]

Public moneys

A committee on Public Moneys, which sat during the years 1856 and 1857, made numerous recommendations, of more or less importance, in reference to the public finances, with a view to subject the public expenditure to a more rigid investigation and control on the part of the House of Commons. In their final report they stated that they were 'aware that the important and extensive changes they have suggested cannot all be immediately carried into effect; but they believe that the continued attention of Parliament and of the executive government to the subject, will secure, at no distant date, all the objects embraced in their recommendations.'[e] In the session of 1861, the chancellor of the exchequer informed the House that the said recommendations had, in the interim, received the careful consideration of the government, and that he was prepared, in regard to most of them, to submit to Parliament Bills, or resolutions, to carry the same into effect.[f]

Harbours of refuge

In the years 1857 and 1858—on motion of the secretary to the treasury—a committee of the House of Commons was appointed to enquire into the policy of making further grants of public money for the improvement and extension of harbours of refuge on the coasts of Great Britain and Ireland. Pursuant to the report of this committee, a royal commission was appointed to complete the enquiry, which reported in 1859. While mutually agreed as to the necessity

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[b] Hans. D. v. 76, p. 1714; and see May's Const. Hist. v. 2, p. 292.

[c] See Broom, Const. Law, pp 615 617; and see *post*, v. 2.

[d] Hans. D. v. 74, pp. 29-48.

[e] Com. Pap. 1857, Sess 2, v. 9, p. 502.

[f] Hans. D. v. 161, pp. 711, 1310. And see *post*, vol. 2.

Select Committees. Precedents.

for the construction of these important works, the two tribunals differed as to their cost, and as to the mode of obtaining funds for the purpose. The committee recommended that two million pounds should be expended for this service, but suggested that three-fourths of the required amount, and three-fourths of the cost of maintaining these harbours, should be raised from passing tolls on shipping. The commission, on the other hand, adjudged that an outlay of four millions would be required to construct the works, and were of opinion that, inasmuch as the general interests of the community were concerned in the undertaking, the greater part, if not the whole, of this sum should be paid out of the Consolidated Fund; and that no passing toll should be levied either for the erection or maintenance of these harbours. On June 19, 1860, the House of Commons resolved that it was the duty of the government to adopt, at the earliest possible period, the necessary measures to carry into effect the recommendations of the commissioners. Some progress had been made by government in the construction of these harbours, but owing to the state of the public finances, and the large expenditure required for other extraordinary services, they had not felt warranted in incurring the whole of this enormous outlay. Sir Morton Peto, in his work on Taxation (p. 316), observes that 'the case of the so-called harbours of refuge should be a lesson to us for the future. A great deal of money has been uselessly expended on very ill-conceived plans.' Whereupon, on May 6, 1862, it was moved in the House of Commons to resolve, that it is the duty of the government to adopt measures to carry into effect the preceding resolution. But, after full debate and explanations from ministers, the motion was negatived upon division. Again, on April 17, 1863, it was moved to resolve, as the opinion of the House of Commons, that so much of the report of the commissioners on Harbours of Refuge as concerned Waterford, Wick, and Padstow be carried into effect, but, after some debate, it was negatived without a division. The whole case in regard to the harbours of refuge is given in the correspondence between the Board of Trade and other public departments respecting said harbours, since the report of the Commons' Committee in 1858.[g] After the report of the royal commission, Lord Palmerston induced Parliament to pass the Harbours' Loan Act, which gave facilities to localities throughout the kingdom, to make or improve their own harbours, by the aid of government loans on easy terms.[h] On April 26, 1864, a motion to declare the opinion of the House that the government ought to proceed with the construction of harbours of refuge, was negatived, on division. On June 13, 1865, a motion that, in the opinion of the House, the government should adopt measures for the construction of some of the said harbours on the

[g] Com. Pap. 1864, v. 55, p. 439. [h] Hans. D. v. 231, p. 38.

coast of Great Britain and Ireland, was negatived, on division. A similar motion was proposed and negatived, on March 21, 1871. On June 27, 1871, a proposed vote in supply, on behalf of Alderney Harbour was negatived, without a division, it being admitted that the grant would have been a waste of public money.[i] On July 28, 1876, and on June 1, 1877, motions in favour of a new harbour on the north-east coast of England were proposed and negatived.

Select Committees. Precedents.

Colonial defences.

On March 5, 1861, a motion was made in the House of Commons for the appointment of a select committee, to enquire and report whether any, and what, alterations may be advantageously adopted in regard to the defence of the British dependencies, and the proportions of cost of such defence as now defrayed from imperial and colonial funds respectively. The mover disclaimed any desire to invade the functions of the executive, but contended that the interference of Parliament in the settlement of this important question had become necessary, in consequence of the failure of a departmental committee, appointed by government in 1859, on colonial military expenditure, to agree in any recommendations on the subject. In reply, the under-secretary for the colonies deprecated the proposed committee, on the ground that the question being one of opinion and principle, and not of facts, was not a fit subject for enquiry by a parliamentary committee. He admitted that the report of the departmental committee had not been free from objection, but contended that the only proper way to treat the question was by negotiations, to be carried on by the imperial government with each of the colonies in their turn. Further debate ensued from which it was evident that the sense of the House was in favour of the appointment of the committee. Accordingly, Lord Palmerston, while he expressed his agreement with the constitutional objections which had been urged against the motion, and felt bound to declare that its tendency was 'rather to transfer to a committee of the House duties and functions which properly belong to the responsible advisers of the crown,' nevertheless consented to the appointment of the committee.[j] After taking voluminous evidence, the committee reported on July 11. Their labours were subsequently characterised as being 'chiefly valuable in furnishing information, promoting discussion, and exhibiting the discordance and inconsistency of opinion on the subject, not as recommending any practicable policy.'[k] On

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[i] Hans. D. v 207, p. 679. *Ib.* v. 215, p. 1407.

[j] *Ib.* v. 161, p. 1420. See the analogous case of the committee on the Board of Admiralty, noticed *ante*, p. 425.

[k] An article in Ed. Rev. v. 115, p. 164, analysing the evidence and pointing out the different views of leading statesmen on this question. See observations of colonial secretary (Duke of Newcastle), in the House of Lords, in Hans. D. v. 164, p. 1579; and of the secretary for

Select Committees. Precedents.

March 4, 1862, on motion of the chairman of this committee, the House resolved, without division, 'That this House (while fully recognising the claims of all portions of the British Empire to imperial aid in their protection against perils arising from the consequences of imperial policy) is of opinion that colonies exercising the rights of self-government ought to undertake the main responsibility of providing for their own internal order, and security, and ought to assist in their own external defence.' On March 21, following another member of the committee, conceiving that this resolution did not go far enough, proposed the adoption of a resolution condemning the erection and maintenance of fortifications, out of imperial funds, in self-governed colonies, not being great naval stations. The administration, while acknowledging the correctness of this, as a general principle, considered it to be subject to certain limitations, rendering the assertion of the principle inexpedient. The motion was accordingly withdrawn.[l] Between the years 1861 and 1870, the principles contained in the report of 1861 were adopted as the settled policy of the empire, and were gradually applied to the Colonies of Ceylon, the Mauritius, Hong Kong, British Columbia, Australia, New Zealand and Canada. Debates in the House of Commons in the years 1867, 1868, and 1869, and in the House of Lords on June 20, 1870, on this subject, proved that 'a judicious and moderate adherence to the report (aforesaid), and a steady endeavour to throw more and more upon the colonies the obligation of defending themselves, was a policy which Parliament would support;[m] and one which eventually was accepted generally throughout the empire as, 'the true policy both of England and the colonies.'[n] So completely so that, in 1873, the under-secretary for the colonies declared 'that the military expenditure for the colonies was now almost entirely for imperial purposes.[o]

Inclosures in royal forests.

On March 3, 1863, a motion was made in the House of Commons for the appointment of a select committee, 'to enquire into the legality of inclosures in Waltham, Epping, and other forests in Essex, and to ascertain what steps ought to be taken to preserve the

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war (Sir G. C. Lewis), on March 9, 1863, showing why the government had been hitherto unable to carry out the recommendations of the committee, in effecting any material reduction in the number of troops in the colonies. Hans. D. v. 169, p. 1281; and *Ib.* pp. 1446-1457, 1776-1780; v. 170, p. 876.

[l] For further debates in the House of Commons on the military defence of Canada, see Hans. D. v. 176, p. 373.

[m] Hans. D. v. 187, pp. 1596-1602. And see *Ib.* v. 188, pp. 5-15; v. 191, pp. 93 97. As to the delay in carrying out certain recommendations of the Com°. of 1861 in regard to military accounts, see Com. Pap. 1867, v. 10, pp. 690, 694.

[n] Hans. D. v. 199, pp. 1162, 1192.

[o] *Ib.* v. 214, p. 1531.

rights of the public, of the poorer foresters, and of the inhabitants of the metropolis, within the forests, as well as to enquire into their general management.' This motion was opposed by the attorney-general, on the ground that it would be a most inconvenient and dangerous precedent to erect a select committee into 'a court of judicature for the purpose of enquiring into and expressing an opinion with reference to the rights of individuals and of the crown,' or 'into any technical and strictly legal rights,' for which purposes a parliamentary committee was a manifestly defective and improper tribunal. Accordingly, at the suggestion of the attorney-general, the motion was withdrawn, and instead thereof a committee was appointed 'to enquire into the condition and management of the royal forests in Essex, and into any inclosures which may have taken place therein since the report of the commissioners of 1850; and to consider whether it is expedient to take any steps for preserving open spots in such forests.'[p] This committee reported on June 9. They recommended the continuance of the inclosure of Epping Forest, and that an adequate portion thereof should be set apart for the public, for the purposes of health and recreation: also, that any path encroachments on the forestal rights of the crown should be abated.[q]

Select Committees. Precedents.

On May 5, 1863, a private member moved, in the House of Commons, for the appointment of a select committee to enquire into the state of Holyhead Harbour, with a view to securing safe and efficient accommodation for vessels engaged in the Irish mail-service and for passengers conveyed by them On motion of the chancellor of the exchequer, the debate was adjourned until papers in relation thereto were distributed to members. It was resumed on May 12, when the motion was agreed to, notwithstanding the opposition of the government, who contended that the committee was unnecessary and inexpedient.[r] On June 1, upon motion that the committee do consist of certain specified members, the chancellor of the exchequer took exception to the list proposed, alleging that it was 'as far as possible from being an impartial committee.' He declined to take the 'invidious and annoying course of proposing that some of the names should be omitted, and replaced by others more impartially selected;' but he felt 'bound to say, even before the committee sits, that [the government] do not think the subject one that ought to be referred to its consideration, and that we shall not be able to look upon its finding as the verdict of an impartially constituted tribunal.'[s] The proposed list was nevertheless agreed to, without a division. But on June 4, a member of the committee, who was personally aggrieved by Mr. Gladstone's remarks, characterised them as being

Holyhead Harbour.

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[p] Hans. D. v. 169, p. 1038.

[q] Com. Pap. 1863, v. 6, p. 552. Hans. D. v. 172, p. 1055. See further, *post*, v. 2.

[r] Hans. D. v. 170, pp. 1243, 1660.

[s] *Ib.* v. 171, p. 242.

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insulting and unparliamentary, and called upon that minister to move that he be discharged from the committee in order to take the sense of the House thereupon. An informal discussion then arose as to the purport of Mr. Gladstone's observations, which were further explained by himself. The Speaker, on being appealed to, acquitted Mr. Gladstone of unparliamentary language, and the subject was dropped.[t] The committee reported on July 14.[u] Their report contained certain recommendations, to which, when discussed in the committee, the president of the Board of Trade had expressed his dissent. Wherefore, on July 23, the chairman moved to resolve, that the recommendation of the committee ought to be adopted. This motion was opposed by government, and negatived, without a division.[v]

On June 22, 1869, on motion of Mr. Gladstone (the prime minister), a select committee was appointed to enquire into the site and charge of the new courts of law. The government desired to associate the House of Commons with themselves in the settlement of these points, as they had given rise to much controversy.[w]

In 1874, the select committee of the House of Commons on public departments (purchases) made a special recommendation in their report (clause 130), that, on a vacancy occurring in the office of Controller of Stationery, it should be filled up by the appointment of a gentleman possessing technical knowledge and experience of stationery and printing. Nevertheless, upon the retirement of Mr. Greg, in 1877, the prime minister appointed to this post Mr. T. D. Pigott, an able and practical man of business, who was previously a junior clerk in the war office.[x] He gave a careful consideration to the aforesaid report, but was of opinion that it was not desirable to give effect thereto.[y] Accordingly, on July 16, 1877, the chairman of the select committee above-mentioned moved to resolve, that in view of the aforesaid recommendation, the recent appointment of controller of the stationery office was calculated to diminish the usefulness and influence of select committees of this House, and to discourage the interest and zeal of public officers. The chancellor of the exchequer defended the appointment on its own merits, and asserted that the government had carried out various recommendations of the committee of 1874, but were not of opinion that it was expedient to limit the choice of the controller of stationery to men possessing technical knowledge of stationery and printing. Nevertheless, the motion was agreed to, by a majority of four.[z] On July 19, the Earl of Beaconsfield (the premier, who was personally

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[t] Hans. D. v. 171, pp. 325–331.
[u] Com. Pap. 1863, v. 7, p. 223.
[v] Hans. D. v. 172, p. 1330.
[w] *Ib.* v. 197, p. 458.
[x] *Ib.* v. 234, p. 1849.
[y] *Ib.* p. 1943.
[z] *Ib.* v. 235, p. 1330.

responsible for the selection of Mr. Pigott), explained to the House of Lords his reasons for making the appointment, and for non-compliance, in this particular, with the recommendations of the select committee. He was followed by leading members on both sides of the House, who testified to the special fitness of Mr. Pigott for this position.[a] On the following day, the chancellor of the exchequer put the House of Commons in possession of the foregoing explanations, and stated that the cabinet, collectively, approved of Mr. Pigott's appointment; and being convinced that it had been made on public grounds, agreed with the premier in his refusal to accept Mr. Pigott's proffered resignation. He left the course to be taken in regard to the Vote of Censure in the hands of the House. Whereupon a private member gave notice of a motion to withdraw the censure, upon the further explanations that had been made.[b] Accordingly, on July 23, after full debate, the motion to withdraw the censure expressed in the former resolution was agreed to, without a division.[c]

III. Practice in regard to the Granting or Withholding by the Executive of Information desired by either House of Parliament.

Information given to Parliament, or withheld.

The rule which forbids any encroachment by Parliament upon the executive authority of the crown has a further application, to which our attention must now be directed.

It is imperative that Parliament shall be duly informed of everything that may be necessary to explain the policy and proceedings of government in any part of the empire; and the fullest information is communicated by government to both Houses, from time to time, upon all matters of public concern. For it is in Parliament that authoritative statements are made, or information given, by ministers, upon public questions; and no action in Parliament should be based upon declarations of policy made elsewhere.[d]

Sometimes a statement, by the minister who is specially responsible, is made in one House and not repeated in the other, 'the

[a] Hans. D. v. 235, p. 1477.
[b] *Ib.* p. 1569.
[c] *Ib.* p. 1727.
[d] *Ib.* v. 230, p. 1814.

ordinary channels of information, *i.e.* the newspapers, being relied upon to give it general publicity. But such a course is inconvenient and objectionable.[e] Much inconvenience having been occasioned by motions for papers having been agreed to in one House, and opposed by government in the other chamber,[f] it is now understood that when papers are presented to one House they shall also be laid on the table of the other.[g]

Information withheld.

Considerations of public policy, and a due regard to the interests of the State, occasionally demand, however, that information sought for by members of the legislature should be withheld, at the discretion and upon the general responsibility of ministers. This principle is systematically recognised in all parliamentary transactions: were it otherwise, it would be impossible to carry on the government with safety and honour. Whenever it is declared, by the responsible servants of the crown, that any information sought for in Parliament could not be supplied without inconvenience to the public service, or for other sufficient reasons, the House refrains from insisting upon its production.[h]

In 1869, ministers agreed to an order for certain papers concerning Fenianism, but finding on close inspection that 'their publication could be attended with no public advantage,' and that 'they contained matter which it is contrary to our public duty as ministers to be parties to laying before the House,' they determined to ask the House to rescind the order,[i] which was done on a division.[j]

Information given and withheld.

And if the government object to produce any documents, on the ground that they are of a private and confidential description, it is not usual to insist upon their being furnished,[k] except under peculiar and imperative circumstances.[l]

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[e] Hans. D. v. 219, pp. 272-313.

[f] *Ib.* v. 173, p. 1054.

[g] *Ib.* v. 232, p. 460.

[h] Mir. of Parl. 1828, p. 109; 1833, p. 626; 1836, p. 971; 1837-8, p. 658. And see Ld. Derby in Hans. D. v. 173, p. 1055.

[i] Hans. D. v. 195, p. 1469.

[j] *Ib.* p. 1758.

[k] Mir. of Parl. 1834, p. 2774; 1835, p. 1634; 1838, p. 5909; 1840, p. 1130; Hans. D. v. 163, p. 822. *Ib.* v. 230, p. 422.

[l] See Ld. Hatherton's Memoir on the occurrences in 1834, pp. 93-95. Mir. of Parl. 1831, p. 524.

[But it must always be remembered that all public transactions of state are necessarily official; and that no public officer would be justified in withholding from official record and access, any document, emanating from himself in his official capacity, in relation to public affairs.[m]]

This rule extends to private correspondence between members of Parliament and a minister of the crown, which ought not to be regarded as official documents.[n] Unless prepared to assert their want of confidence in the minister who is answerable for the department concerned, or in the government generally, the House should not embarrass the ministry by insisting on the production of documents which they feel it their duty to refuse.[o]

When 'copies' of correspondence, &c., are moved for by private members, it is customary to add, 'or extracts;' leaving to ministers a discretion as to despatches which it may be advisable to lay before Parliament, and as to those which it may be expedient, in whole or in part, to withhold.[p]

Debate.

In like manner, if the government declare that a discussion on any particular subject could not take place without inconvenient and injurious consequences to the public service,[q] or without eliciting expressions of opinion from the ministry, or from members generally, which it would be premature and prejudicial to make known,[r] the debate ought not to proceed.

Premature communication of despatches.

It would, moreover, be highly irregular to communicate to Parliament copies of despatches addressed by a secretary of state to the governor of any British dependency, until the receipt thereof had been acknowledged by the person to whom they were addressed.[s]

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[m] See the case of Ld. Chatham, *ante*, p. 267; and Parl. D. v. 16, p. 2****.

[n] Mr. Gladstone, Hans. D. v. 204, pp. 651, 657.

[o] Mir. of Parl. 1839, p. 799.

[p] Hans. D. v. 172, p. 575. *Ib.* v. 204, p. 650.

[q] *Ib.* v. 128, pp. 1420-1429.

[r] Mir. of Parl. 1831, pp. 1109, 1184. Hans. D. v. 195, p. 1533.

[s] Mir. of Parl. 1838, p. 5824; 1840, p. 1710; Hans. D. v. 208, p. 954. But see *Ib.* v. 87, p. 669. In 1854 the government consented to lay before Parliament copies of instruction that had been, 'or here-

But it is contrary to the respect due to Parliament to communicate, beforehand, to the public, through the press, important information intended for the use of Parliament.[t] Although it is not unusual to furnish the press with advance copies of official reports, with a view to give early publicity to such documents.[u] For further particulars in regard to the communicating of despatches to Parliament, see the section in the chapter concerning 'Intercourse with Foreign Powers.'

Departmental reports confidential

'The system of laying upon the table of the House reports from officers addressed to particular departments of the executive government is most objectionable.'[v] And the House ought not to insist 'upon the production of papers and correspondence which concerned the preparation and preliminary consideration of measures; they would thereby put a stop to that freedom of criticism which was always invited on such occasions, and which contributed so much to the perfection of public measures.'[w] If the House were to insist upon the production of such documents, 'instead of the government getting what we get now, confidential reports, containing the most minute details of the opinions of officers, given frankly and freely, for the heads of departments, we shall have a system of reports framed for laying upon the table of the House of Commons, and those will be accompanied by "confidential reports for the head of the department alone."'[x] 'There have been cases in which reports of a confidential character from officers of the government have been laid upon the table of the House, to prepare the public

after might be issued,' to commanders of the Arctic Searching Expedition.—*Ib.* v. 132, p. 438. See also Ld. Ellenborough's case in 1858, *ante*, p. 228.

[t] *Ib.* v. 131, pp. 637, 641, 759, 875.

[u] *Ib.* v. 231, p. 972.

[v] Lord C. Paget (Sec. to the Admir.), Hans. D. v. 177, p. 961.

[w] Mr. Disraeli, Hans. D. v. 193, p. 1273.

[x] Hans. D. v. 177, p. 1402; and see p. 1455.

mind, and also that of Parliament, to consent to some large measure, or perhaps some considerable vote of public money; but, generally, I think it is a course which the House ought not to sanction.'[y]

When papers are refused by ministers.

The administration have refused to concur in motions for the production of papers, whether by order or upon an address to the crown, on the ground that there was no public officer whose duty it was to furnish the required information.[z] Under these circumstances, 'it is particularly desirable that the House should make no such orders without, at the same time, determining by what means they shall be carried into execution.'[a]

Returns are sometimes refused on account of their voluminous character, and the length of time it would take to prepare them.[b] In order to obviate this objection, 'it is very desirable that members, before moving for very voluminous returns, should communicate with the department possessing the information, when it might be supplied in a much smaller compass.'[c] Sometimes, returns which are not of sufficient general importance to be supplied at the public expense are granted when the member asking for the return, or others interested therein, undertakes to defray the cost of obtaining, or of printing, the same, or both charges.[d] It is not customary, however, to object to motions for returns merely on account of the trouble and expense to individuals that would be occasioned by their production, notwithstanding that there may be no funds available for the remuneration of the persons employed in the execution of the order.[e] In fact, it has been the practice of Parliament to order from public officers, of

Cost of furnishing returns to Parliament.

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[y] Mr. Disraeli, *ib.* v. 178, p. 154.

[z] Mir. of Parl. 1830, p. 24; 1830–31, p. 50; 1831–32, p. 3254.

[a] *Ib.* (The Speaker), 1836, p. 887.

[b] *Ib.* 1837, p. 601.

[c] *Ib.* 1829, p. 1900.

[d] Hans. D. v. 197, p. 1887.

[e] Mir. of Parl. 1830, Sess. 2, p. 501. To pay the expense of preparing returns to the sec. of state or to Parliament out of county rates has been declared to be illegal.—*Ib.* 1834, p. 3331; 1835, p. 245. *Ib.* 1841, p. 2014.

various grades, returns which they were not required by law to furnish, and for which no remuneration was provided, 'That might be considered a customary right exercised in the public interests;' and although, upon rare occasions, some remuneration has been given to the parties employed, in order to accelerate their labours, yet 'no public officer has any right to refuse to obey an order of the House until he shall be paid; the question of remuneration must not be raised between him and Parliament.' 'Every public officer holds his situation under the control of Parliament, and he is bound to give information.' It is for the executive government afterwards to decide whether he has any claim for compensation for such a service.[f]

Precedents.

Education Office: inspectors' reports.

On February 22, 1859, Mr. Cowper called the attention of the House of Commons to a circular from the Education Committee of the Privy Council, dated May 22, 1858, which directed that, instead of the annual reports of the inspectors of schools being published in full (as had been done from 1844 to 1858), relevant extracts only of such reports should be appended to a general report from the Education Committee to her Majesty. The new regulation had been made on account of certain objectionable matter which had appeared in a report, and which had been complained of by members of the House of Commons. Mr. Cowper contended that the Education Committee 'had it in their power to lay down the strictest rules with regard to the character and nature of the reports they desired to have sent up to them,' but asserted 'the expediency of allowing the original reports to appear unaltered and unabridged.' He concluded by moving that an humble address be presented to her Majesty, praying that the reports of school inspectors, when prepared in accordance with the instructions of the Committee of Council on Education, should continue to be laid before Parliament unaltered and unabridged. Mr. Adderley (vice-president of the Education Committee) opposed the motion, on the ground that so much irrelevant matter had been introduced into these reports, that a new rule on the subject had become imperatively necessary, for economical reasons, as well as on the score of propriety. A specimen of the new form of report would shortly be submitted to Parliament, when, if it should appear objectionable, the House could 'agree to a resolution

[f] Mir. of Parl. 1841, p. 2199; 1835, p. 1700. Hans. D. v. 182, pp. 1644, 1775.

Precedents.

requiring, on its own responsibility, that the reports furnished to the executive should be published by them *in extenso*.' After some further debate, the motion was withdrawn, with the understanding that government would endeavour to meet the views of the House in this matter.[g] Accordingly, Mr. Adderley abandoned his plan of reducing the inspectors' reports under specific heads, and thenceforth permitted the reports to be printed without abridgment; but he nevertheless insisted on his right to strike out therefrom all superfluous and irrelevant matter.[h] [Subsequently, in his evidence before the Commons' Committee on Education, in 1865, Mr. Adderley declared that the sum of the instructions to the inspectors which were issued up to the time he left office was, that their reports should be upon the facts which came within their inspection, and that their suggestions should be practical, and not abstract disquisitions upon educational philosophy: but he never meant to limit their suggestions to one side of the question.[i] The inspectors were then, and still are, at liberty to object to particular minutes, on the ground that they did not work well.[j]] But this concession failed to give complete satisfaction. On March 27, 1863, enquiry was made in the House of Commons, whether the reports of certain inspectors had been materially altered, or wholly suppressed, in the annual report from the Education Office; and if so, why so; and whether there was any objection to communicate such suppressed reports to Parliament. Mr. Lowe (who had succeeded Mr. Adderley as vice president of the Education Committee) replied that considerable difficulty had always been experienced in confining these reports within proper limits; that a new minute had been lately issued—embodying the substance of previous instructions—requiring the inspectors to confine their reports to the state of the schools they had examined, and to practical suggestions for the management and improvement of the same: that whenever a report contained irrelevant matter, it was sent back to the inspector, with an intimation that, unless it was altered in conformity to the minute, it would not be printed or laid before Parliament—(the particular passages objected to, however, were never specially indicated): that last year three reports had been returned to their authors, who had declined to amend them to the satisfaction of the Education Office, and therefore they had not been printed with the report of the department. This year a similar number had been sent back, including one from an inspector whose report had been rejected in 1862. He could not consent to lay these reports on the table, as this would be virtually offering a premium to the inspectors to disregard the rules of the department, and would

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[g] Hans. D. v. 152, pp. 696, 702, 714.

[h] *Ib.* v. 171, p. 727.

[i] Com. Pap. 1865, v. 6, pp. 73, 74.

[j] *Ib.* p. 77.

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Education Office: inspectors' reports.

be subversive of all discipline.[k] On June 11, 1863, a member complained to the House of Commons of the suppression of several reports from school inspectors, and enquired of the vice-president of the Education Committee upon what conditions he would allow the publication of such reports for the information of the House. He argued that the House had a right to full information, and should be permitted to judge between the Education Office and the inspectors as to the suitability of the reports for publication. Mr. Lowe replied that it would be impossible to lay down any exact conditions under which the reports might be printed, but that, whenever they contained irrelevant or controversial matter in regard to questions decided upon by the department itself, they could not be allowed publicity. Mr. Adderley defended the conduct of the Education Office, and urged that if objection was taken thereto by any member, he should move for the particular report which he considered had been too stringently dealt with, instead of laying down a general proposition that would be disadvantageous to the public service. After some further debate the subject was dropped.[l] But on April 12, 1864, it was again revived, upon the motion of Lord R. Cecil, to resolve, 'that in the opinion of this House, the mutilation of the reports of her Majesty's inspectors of schools, and the exclusion from them of statements and opinions adverse to the educational views entertained by the Committee of Council, while matter favourable to them is admitted, are violations of the understanding under which the appointment of the inspectors was originally sanctioned by Parliament, and tend entirely to destroy the value of their reports.' His lordship cited, from a paper which was privately circulated amongst members during the debate,[m] cases in support of his position, and asked the House whether it could trust reports thus expurgated. Mr. Lowe denied any knowledge of the cases referred to, and repeated the arguments formerly adduced in justification of the department. He said, 'It is quite open to the House to express an opinion that the inspectors should report directly to Parliament, and not to the Privy Council, and thus exonerate us from all responsibility in the matter;' but so long as the present system prevails, departmental discipline must be enforced. He rejoiced to add, that the reports for the past year had all come in, and that it had not been necessary to return one of them to the inspectors. Secretary Sir George Grey said, that in the Home Office, and in other departments of state, similar regulations were enforced,[n] and that he considered it absolutely necessary that the head of a department should

[k] Hans. D. v. 170, p. 24.

[l] *Ib.* v. 171, pp. 717–733.

[m] Lord Granville's speech in House of Lords, *Ib.* v. 174, p. 1183; and Mr. Lowe's explanation, *Ib.* p. 1206.

[n] As, for example, in the case of factory inspectors. (See Hans. D. v. 174, p. 1501.)

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have such a power. Nevertheless, on division, the motion was carried against the government by a majority of eight. On April 18, Earl Granville (the president of the Committee of Council on Education) called the attention of the House of Lords to the foregoing resolution, and, as the official head of the department, assumed full responsibility for Mr. Lowe's acts. Moreover, he gave explanations of the routine pursued at the Education Office, which entirely corroborated Mr. Lowe's statements, and exonerated him from any suspicion of unworthy conduct. On the same day, Mr. Lowe informed the House of Commons that, in vindication of his own honour, he had felt it necessary to resign his office; and at the same time he entered into detailed explanations in disproof of the charges brought against him. Mr. Lowe afterwards stated that he did not understand that the sending back a report to an inspector, to be corrected according to the regulations of the department, without marking any objectionable passage, could be regarded as 'mutilation.' 'The House resolved in a contrary sense, and I resigned my office, not because my department was censured, but because I considered, in fact, that the House gave me the lie in resolving, after the statement I had made, that I had mutilated.' He added, that if he had supposed 'mutilation' to mean simply carrying out the official minute, according to his understanding of it, 'I should not have thought it necessary to resign my office; the department was censured, but that would not have concerned me: that would have been the government's look out. I considered that my personal honour was struck at when, as I understood, the statement which I had made appeared to be disbelieved by the House.'[o] This view of the degree of official responsibility attaching to the office of vice-president was afterwards confirmed by Lord Granville, who declared that, as lord president of the council, he was technically the one who was bound to resign; whilst technically the vice-president might have retained his office, notwithstanding the vote of censure passed on the department. But, in fact, Mr. Lowe's resignation was dictated by a sense of personal honour: Lord Granville wished to resign, but was induced by the premier to await the result of the reconsideration of the question by the House of Commons.[p] The marks on the reports which had been privately circulated amongst members on the night of the adverse vote had been made by subordinate clerks in the Education Office without the knowledge or sanction of the official heads. They were intended to direct the attention of the secretary to particular passages. He himself had never, in any instance, struck out anything from an inspector's report, and had forbidden others to do so, or

[o] Com Pap. 1864, v. 9, p. 81. [p] *Ib.* 1865, v. 6, p. 105.

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Education Office: inspectors' reports.

even to mark objectionable paragraphs. Lord R. Cecil expressed his complete satisfaction with these explanations, and stated that, had they been given before the adverse vote was taken, it would not have been pressed, or agreed to by the House. Lord Palmerston passed a high eulogium on his retiring colleague, and intimated his intention to move for a committee to enquire into the question of fact involved in the charges which had been preferred against him; but the general feeling of the House appeared to be adverse to any further enquiry, after the satisfactory explanations given by Mr. Lowe. However, the resolution of April 12 being regarded by the government as conveying a grave and serious censure on a public department which was deemed unmerited, on May 12, upon motion of Secretary Sir George Grey, a select committee was appointed to investigate the matter, by enquiring into the practice of the Committee of Council on Education with respect to the reports of her Majesty's inspectors of schools. In deference to the wishes of the House, the government agreed that the committee should be nominated by the General Committee of Elections. On July 11 the committee made a report, which briefly reviewed the matter at issue, confirmed the statements made to the House by Mr. Lowe, and entirely exonerated him from the imputation of personal misconduct. After pointing out that the resolution of censure, which led to the resignation of Mr. Lowe, was passed from a 'want of information,' which 'was the cause of a double misunderstanding,' the committee declared that they had 'carefully considered the action of the department, and had come to the conclusion, that the supervision exercised in objecting to the insertion of irrelevant matter, of mere dissertation, and of controversial argument, is consistent with the powers of the Committee of Council, and has, on the whole, been exercised fairly, and without excessive strictness.' 'Some such power is essential to the effectual working of the department, so long as it retains its present constitution and functions.' In conclusion, the committee recommend, 'that all instructions which may hereafter from time to time be issued to the inspectors, either as to their general or tabulated reports, should be laid before Parliament.'[q] On July 25, Lord Palmerston moved that it be resolved, that having considered the foregoing report, the House was of opinion that the resolution of censure passed on April 12 should be rescinded. After a debate, in which the pro-

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[q] Com. Pap. 1864, v. 9, pp. 17, 18. The House was afterwards informed 'that it was the unanimous opinion of the committee that the resignation of Mr. Lowe was totally and entirely unnecessary.' (Hans. D. v. 176, p. 1804.) For a decision in 1876 in regard to the future publication of Inspectors' Reports, see Hans. D. v. 230, p. 615.

Precedents.

movers of the vote of censure stated their willingness to agree to this motion in the sense in which they understood it to be proposed —namely, as acquitting the department of being influenced by improper motives in the course it had pursued, whilst adhering to the opinion that the course was improper—the motion was agreed to without a division.

Rivers in Ireland.

On June 16, 1863, a resolution was moved, in the House of Commons, to declare the opinion of the House that it was the duty of the government to carry the law into effect by immediately removing stake and hand weirs in certain rivers in Ireland; but no sufficient evidence of neglect of duty on the part of the authorities having been adduced, the motion was withdrawn.[r]

West Riding of Yorkshire, assize town.

The sovereign having determined, upon the advice of the Privy Council, and under the authority of the Act 3 & 4 Will. IV. c. 71, to constitute the West Riding of Yorkshire into a separate assize district, of which Leeds should be the assize town, an attempt was made in the House of Commons to obtain the nomination of the town of Wakefield instead of Leeds, by a motion, made on February 19, 1864 (previous to the formal issue of the Order in Council in favour of Leeds), for an address to the Queen, setting forth the claims of Wakefield to be the assize town, and praying that it might be selected for that purpose. The home secretary (Sir G. Grey) did not deny the right of the House to address the crown upon this subject, but urged that no sufficient cause had been given to justify an interference with the ordinary course prescribed by law, and to set aside the decision of the Privy Council. Upon a division, the motion was negatived. But on June 13, an address was carried in the House of Lords (against ministers), praying that the decision of the Privy Council, ordering the removal of the West Riding Assizes from York to Leeds, instead of to Wakefield, might be reconsidered. On June 17, the Queen's answer to this address was reported. It set forth that the assizes for the West Riding had been appointed to be held at Leeds on August 10, and that if it should hereafter appear expedient to appoint some other place for holding the said assize, the subject should be again referred for the consideration and advice of the Privy Council.[s]

Plans for Palace of Justice.

On March 22, 1866, a resolution was carried in the House of Commons, upon division, against the government: 'That in the opinion of this House, it is not expedient that the competition for the building of the New Courts of Justice should be limited to six architects only.' Subsequently the House was informed that, in

[r] Hans. D. v. 171, pp. 981-984.
[s] *Ibid.* v. 170, p. 1198; and v. 193, p. 1823.

Precedents.

consequence of this resolution, the number of competing architects had been extended to twelve.[t]

On June 25, 1868, the House of Commons resolved, on a division, against ministers, 'That in the opinion of this House, the Peel statue ought to be removed from its present site in New Palace Yard.'[u]

On June 29, 1868, a resolution in favour of the employment of discharged soldiers in government situations was proposed and discussed in the House of Commons. But it being urged that 'it would be a great mistake to endeavour to bind the judgment of the House or of the government' upon this question, it was withdrawn.[v]

On July 8, 1870, an address to the crown was carried in the House of Commons against the government, praying that no buildings might be erected on that portion of the Thames Embankment which is reserved to the crown, and which has been reclaimed from the river at the cost of the metropolitan ratepayers. On July 19 her Majesty's answer to this address was reported. In the following session, on motion of the prime minister, a select committee was appointed to consider the use to which this reclaimed land should be appropriated. This committee reported on August 3, 1871.[w]

On August 5, 1870, a resolution was moved in the House of Lords, calling in question a recent change made by the Charity Commissioners in the administration of their trust. But the Lord Chancellor having pointed out the irregularity of this mode of proceeding the motion was withdrawn.[x]

On July 5, 1872, Mr. Ayrton (commissioner of works) referred to a resolution passed by the House of Commons in 1867,[y] condemning the elevation for the London University, whereupon, though the building had been partly erected, the Office of Works was compelled to take it down and prepare a new elevation in deference to the opinion of the House. If any similar resolution should be passed, in regard to other designs for buildings, 'it would be the duty of the Office of Works to reconsider the subject.'[z]

On April 21, 1874, a motion was submitted to the House of Commons that 'abstracts and summaries' of official correspondence presented to Parliament ought to have the name of the selector or editor appended, as a guarantee of accuracy and sound judgment in their compilation. But the motion was negatived without a division.

The Queen's ministers are not only the rightful

[t] Hans. D. v. 183, p. 181. See a further discussion on this subject, *Ib.* p. 1178.

[u] *Ib.* v. 192, p. 2149.

[v] *Ib.* v. 193, pp. 314-323.

[w] *Ib.* v. 225, p. 1927.

[x] *Ib.* v. 203, p. 1572.

[y] *Ib.* v. 187, p. 1463.

[z] *Ib.* v. 212, p. 699.

Papers concerning private affairs.

guardians of the prerogatives of the crown in Parliament, but it also devolves upon them to protect the liberty of the subject, and the interests of private individuals and associations, who have no direct representation therein, from the assumption by Parliament of arbitrary and unjustifiable authority.[a] On this principle the government have uniformly resisted all attempts, on the part of either House, to obtain, whether by their own order or through an address to the crown, any documents or information concerning the affairs of private individuals,[b] or to sanction the appointment of committees to enquire into private and personal affairs,[c] unless presumptive proof of delinquency, calling for parliamentary investigation, could be shown.[d] This rule includes the case of private educational institutions not being in the receipt of public money.[e]

On July 24, 1862, it was stated in the House of Commons, by the secretary for Ireland, that government had no authority to call for a certain educational return from the Roman Catholic bishops in Ireland.[f]

Private companies, &c.

It has even been held to apply to the affairs of private companies, and of 'public institutions which are not in receipt of assistance from public funds.'[g] But it was distinctly laid down by Sir Robert Peel and Lord John

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[a] See the debate in the H. of Comons on the Ancient Monuments Bill. Hans. D. v. 218, pp. 579–595. For the constitutional doctrine in the United States as to the sacredness of private rights, see Judge Miller's decision, in 1874, 20 Wallace Sup. Ct. Rep. p. 662.

[b] Mir. of Parl. 1830, p 449; 1831, p. 193; 1833, p. 1614; 1836, p. 125. Hans. D. v. 199, p. 998. Ministers will often require motions asking for information affecting a particular class of individuals to be made numerical, instead of nominal, in order to screen private persons from unnecessary publicity.—Hans. D. v. 160, p. 1581. *Ib.* v. 218, p. 2025; v. 232, p. 634.

[c] Hans. D. v. 201, p. 71.

[d] Mir. of Parl. 1831–2, p. 1237; 1840, p. 2053.

[e] *Ib.* 1836, p. 873; 1840, p. 1772.

[f] Hans. D. v. 168, p. 737.

[g] Mir. of Parl. 1837–8, p. 3672; Hans. D. v. 73, p. 1759. See debates in the H. of Comons on May 23, 1876, on a motion for an address for detailed statements of the property, income, and expenditure of the City of London Guilds or Companies; and on April 10, 1877, on a motion in favour of the introduction, by ministers, of some Bill to empower the crown to enquire into the same.

Parliament and private corporations.

Russell, in the case of the Royal Academy, that the inquisitorial jurisdiction of Parliament could not be limited to such 'public institutions' only as were the recipients of public money; but that 'when an institution is established to assist in promoting the cultivation of the arts, or other strictly public object, it could not be denied that the House had a right to enquire into its affairs, even though it did not receive public aid.'[h] And on a later occasion it was declared, by Sir Robert Peel, that 'where Parliament has given peculiar privileges to any body of men[i] [as, for example, banks or railway companies], it has a right to ask that body for information upon points which it deems necessary for the public advantage to have generally understood.' The great point to be aimed at in such enquiries, he considered to be, 'that while you extract all the information the public require to have, you should, at the same time, avoid all vexatious interference in the details of the business of the respective undertakings.'[j]

On April 9, 1867, Sir Morton Peto moved for the appointment of a select committee 'to enquire into the means adopted by the London, Chatham, and Dover Railway Company for raising the share capital and exercising their borrowing powers under the various Acts of Parliament, authorising the construction of the main line and its extensions and branches.' He did so professedly on public grounds, but mainly for the purpose of obtaining a public scrutiny into his own conduct, as a director of the said company, in order to refute certain charges affecting his personal character, which had been preferred against him in that capacity. The chancellor of the ex-

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[h] Mir. of Parl. 1839, pp. 4238, 4503. Hans. D. v. 229, p. 295.

[i] See the proceedings in the House of Lords, in regard to an order that the Corporation of the City of London should lay before the House a detailed account of their income and expenditure between certain years; the Corporation having applied to Parliament for an Act to enable them to increase their revenues, by imposing a tax on coals. Mir. of Parl. 1829, pp. 1805, 1834.

[j] Mir. of Parl. 1840, p. 4840. And see *Ib.* 1828, p. 825. See further, in regard to the principle in question, showing the respect entertained by both Houses for private rights, *Ib.* 1837, pp. 787, 997, 1030; 1838, p. 5400; 1839, p. 3421. Hans. D. v. 74, p. 25; v. 131, pp. 135, 785; v. 156, p. 1103. And on the general question of the power of Parliament to compel the production of documents, see Smith's Parl. Remembrancer, 1860, p. 29.

chequer (Mr. Disraeli) objected to the motion as an unprecedented attempt to obtain a parliamentary investigation into matters with which the House of Commons has no connection or concern. Mr. Gladstone agreed that the mover had no *locus standi* for such a proposition. He added, that the motion might perhaps be justified 'on the ground that railway companies solicit special parliamentary powers, and that Parliament itself claims greater powers over railway companies than it does over other companies.' Still, as a question of policy, he admitted that the objection was unanswerable, and that, if the motion were acceded to, it would probably occasion very considerable embarrassment, in the conduct of the enquiry, and undoubtedly great future embarrassment as a precedent applicable to other companies in positions more or less analogous. Whereupon the motion was withdrawn.[k]

Again, no motion for papers should contain argumentative matter, or should assume facts of which the House was not officially cognisant.[l]

Parliamentary ground for ordering papers.

It is 'the rule of Parliament, that no papers shall be laid on the table of either House, unless some sufficient reason have been stated for their production.'[m] It is irregular to move for the production of papers merely to further the interests or views of private persons, or except for the purpose of founding, or facilitating, parliamentary proceedings.[n] Government have refused to grant papers, 'unless it be intended to found some proceedings upon them.'[o]

Summary in regard to this prerogative.

The foregoing precedents, it is hoped, will serve to explain more clearly the constitutional position of Parliament in regard to the prerogative of administration. Without denying the abstract right of either

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[k] Hans. D. v. 186, pp. 1339–1349. And see the debate on a motion, afterwards withdrawn, in relation to the refusal of the Salters' Company to grant a site for a Roman Catholic church on one of their estates in Ireland, upon the ground that they were obliged by their charter 'to encourage Protestantism and to discourage Popery in the North of Ireland.' *Ib.* v. 187, p. 891.

[l] Hans. D. v. 218, p. 2023.

[m] Ld. Melbourne, Mir. of Parl. 1838, p. 5387.

[n] *Ib.* 1831, p. 2248; 1833, p. 547.

[o] *Ib.* 1839, p. 4422. But see the following cases, wherein members of Parliament, being in possession of valuable statistical or other information, obtained orders, or addresses, for the production of the same, to one or other of the Houses of Parliament.—*Ib.* 1830, Sess. 2, p. 416; 1838, p. 5273; 1839, p. 4372.

Summary.

House to address the crown, or to institute enquiries by select committees, upon any matter, they will show the great public inconvenience attending an attempt on the part of Parliament to interfere with the ministers of the crown in the details of government, the inexpediency of applications for documents which the responsible advisers of the crown consider it imperative to withhold, and the unwarrantable nature of any intrusion by Parliament into the private affairs either of individuals or of corporate bodies, without just cause. So long as any existing government retain the confidence of Parliament, it is unsafe and unwise, as a general principle, to interfere with them in matters of administration. Those who are directly responsible for the conduct of public affairs are they who possess the necessary information for the proper discharge of the same. Parliament exercises a direct control over the ministers by whom all public affairs are transacted. It has a right to enquire into every grievance or abuse of power, whether on the part of those ministers or of any other public functionary. It may also express its opinion in regard to any act of the government; and it not unfrequently happens that the mere declaration of opinion in Parliament upon some objectionable departmental regulation, unaccompanied by any formal motion, suffices to induce the government to modify their plans, conformably to the views entertained by the House.[p] But all this is very different from an attempt on the part of the legislature to usurp the functions of the executive, or from the endeavour by the House of Commons to compel the adoption of their opinions upon a question of administration, irrespective of those of the government or of the other Chamber;

[p] See the case of the Treasury Warrant respecting unpaid letters, discussed in the House of Lords on February 22 and 24, 1859.

a proceeding which must tend to destroy the harmony which should exist between the different powers in the state, and to transfer the executive authority from the hands of responsible ministers into those of an irresponsible and uncontrollable democracy.[q]

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[q] See remarks on this head in Stockmar's Mem. v. 2, pp. 449, 545.

CHAPTER VIII.

CIRCUMSTANCES UNDER WHICH PARLIAMENT HAS A RIGHT TO INTERFERE, IN ORDER TO RESTRAIN THE ILLEGAL EXERCISE OF EXECUTIVE AUTHORITY.

Abuse of executive authority.

WHILE Parliament is constitutionally debarred from interfering, by order or resolution, with the ordinary routine of government, except for the purpose of expressing an opinion as to the expediency of any particular proceeding, or line of policy—it is otherwise if the crown itself attempts to encroach upon the functions of Parliament, and endeavours to accomplish by its own action that which cannot lawfully be effected, except with the sanction and co-operation of Parliament. It is then the duty of Parliament to interpose, and to call to account the ministers of the crown who are responsible for the abuse or excess of executive authority. In like manner, if any individual minister is guilty, in his official capacity, of any illegal or oppressive act, it is the privilege of the injured party to apply to Parliament for redress; and the matter of complaint being substantiated, Parliament will hold the offending minister personally responsible for his misconduct.

There are certain forms of procedure, of ordinary occurrence in the administration of public affairs by the ministers of the crown, which need to be strictly confined within constitutional limits, lest they should become the instruments of oppression or misgovernment. These are—The Issue of Orders in Council and Royal Proclamations; and of Minutes of Committees of Council,

and other Departmental Regulations; and (in the next chapter) Legislation by Public Departments; and the entering into Contracts by Government Departments for the public service.[a] The proper limits of executive authority in relation to each of these administrative acts will be briefly explained. We shall then proceed to define the responsibility which attaches to individual ministers of state for personal acts of misconduct in their official capacity.

Authority of the Crown in the Issue of Orders in Council and Royal Proclamations.

Limited authority of the executive.

The legislative function properly belongs to Parliament, and no single branch thereof may legislate without the concurrence of the other two.[a] The executive has a limited power of legislation by Order in Council, and rules framed by departments of state, but only where the exercise of such power has been authorised or sanctioned by Parliament. It is a fundamental law of the English constitution, that the sovereign can neither alter, add to, nor dispense with, any existing law of the realm.[b]

Orders in council.

This important point was first established beyond dispute in the reign of James I., by the proceedings in Parliament upon the case of Bates, an English merchant, who refused to pay a duty on currants imported into the country from abroad, which duty was sought to be levied by the sole authority of the king. The Court of Exchequer, in 1606, sustained the claim of the crown; but when the matter was discussed in the House of Commons, it was shown that this decision was contrary to the provisions of the Great Charter, and therefore void. It was further alleged that the sovereign could

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[a] See *ante*, p. 407.
[b] Thomas, Leading Cases in Const. Law, pp. 5, 11.

Taxation by the crown illegal.

not, without the assent of Parliament, impose a duty on any article of merchandise imported into or exported from the country; or, in fact, any duty whatsoever either upon foreign or domestic commodities, whether in time of war or peace. The conclusions arrived at upon this occasion were embodied in a Petition of Grievances, which was addressed by the House of Commons to the king, in the year 1610, and favourably received by his Majesty.[c]

This important doctrine was confirmed, in the following reign, by the celebrated case of Rex *v.* Hampden, wherein, notwithstanding that the contrary doctrine was asserted by a majority of the judges, Parliament annulled the judgment, and by the Statute 16 Car. I. c. 14 declared that the sovereign cannot, without the consent of Parliament, assess or levy ship-money upon the subject.[d]

The mode whereby the Stuart sovereigns sought to enforce their unconstitutional claims of levying taxes upon the people, in derogation of the legislative functions of Parliament, was by the issue of royal proclamations and orders emanating from the Privy Council. At that period the Privy Council was still the great governing body in the state, by means of which the will of the sovereign was promulgated and enforced. The king's government was carried on through the instrumentality of Orders in Council, and by the issue of royal proclamations, which were put into execution by the subordinate officers of the crown.

This ordaining power of the crown in council was the ancient method whereby the crown exercised its legislative functions; but as the functions of Parliament, as sharing sovereign legislative power, gained recognition, the constitutional principle was established, that the king in council may not make any ordinance contrary

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[c] Broom's Const. Law, pp. 247-305. [d] See *Ib.* pp. 306-370, 401-408.

to the common law, or the ancient customs of the realm, and the statutes ordained in Parliament. The principle has been distinctly recognised since the close of the fourteenth century;[e] and was subsequently reiterated and confirmed by the Bill of Rights. The ancient prerogative of the crown in legislating by orders in council has been subjected to the control of Parliament, and is now mainly exercised as a deputed and not as a prerogative power. The crown still retains the right to regulate various details of administration by its own prescriptive authority, but it is an admitted principle that the sovereign has no right, by a mere order in council, either to sanction a departure from the requirements of an existing law, or to interfere with the established rights or privileges of any class of persons within the realm. It is competent to the crown to declare and enforce, by proclamation, the execution of any existing law, but it is not within the power of the crown, either to add to, alter, or dispense with any law of the land.[f]

Dispensing power.

Following the example of the Church of Rome, the sovereigns of England, from an early period, claimed the right to dispense with the laws of the land, by the issue of proclamations, and by making grants or decrees, '*non obstante* any law to the contrary.' In this way they assumed a power, *virtute coronæ*, to dispense with existing laws, or with the penalties consequent upon a breach of them; or else they undertook to dictate to the people in respect of matters indifferent, and in regard to which perfect liberty of action ought to have been allowed.[g] The current of authority indicates that the prerogative of dispensing by *non obstante* with Acts

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See Stubbs, Const. Hist. v. 2, pp. 572, 584.

[f] See 1 Coke's Inst. 120A *n*, 4. Broom's Const. Law, p. 374. And see Ch. Just. Cockburn's charge in the case of the Queen *v.* Nelson and Brand, p. 37. 8vo. L. 1867.

[g] Cases cited, Broom, pp. 375–396.

of Parliament was, subject to certain restrictions, recognised in former times as vested in the crown, and was repeatedly exercised during the sixteenth and seventeenth centuries. The use and abuse of this prerogative occasioned repeated conflicts between the crown and Parliament and the courts of law, and eventually cost King James II. his crown.[h] This branch of the royal prerogative was finally annihilated by the Bill of Rights, which declared that 'the pretended power of suspending of laws, or the execution of laws, by regal authority, without consent of Parliament, is illegal;' and that 'the pretended power of dispensing with laws, or the execution of laws, by regal authority, as it hath been assumed and exercised of late, is illegal.' 'Since then no one has presumed to advocate the existence of a dispensing power, under any circumstances whatever, as inherent in the crown.'[i]

Orders or proclamations.

From the epoch of the Revolution of 1688, whenever the crown has ventured, upon occasions of public emergency, to issue royal proclamations or orders in council, which appeared to sanction any departure from the laws of the land, the necessity for such a proceeding on the part of government has been narrowly investigated by Parliament; and when it has been shown to have been illegal, although justifiable, acts of indemnity have been passed, to exonerate all persons who have advised or carried into execution the same.[j] Legislation of this kind is a parliamentary acknowledgment of the principle that, in times of danger or emergency, the crown, acting under the advice of responsible ministers, may properly anticipate the future action of Parliament, by a temporary suspension of certain classes of statutes.[k] Abstractly, the crown has

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[h] Broom, pp. 494–507. Stubbs's Const. Hist. v. 2, p. 580.

[i] Broom's Const. Law, pp. 507, 508.

[j] *Ib.* pp. 379, *n*, 508, *n*.

[k] Cox, Eng. Govt. p. 29. Campbell's Chanc. v. 5. p. 267.

no constitutional right to issue any such orders or proclamations; but, in the words of Sir Robert Peel, 'Governments have assumed, and will assume, in extreme cases, unconstitutional power, and will trust to the good sense of the people, convinced by the necessity to obey the proclamation, and to Parliament to indemnify the issuers.'[1]

Orders in council.

Nevertheless, with the important limitations above referred to, considerable powers are still inherent in the sovereign in council; and express authority for the issue of orders in council is frequently conferred upon the crown by legislative enactment. 'A large proportion of what may be called the details of legislation rests upon the authority of orders in council, some of which are issued by her Majesty in virtue of her prerogative, while others derive their force from the provisions of Acts of Parliament.' It is competent to a court of justice to enquire into the validity—or accuracy, in the statement of alleged facts—of an order in council, duly passed and gazetted.[m] As examples of the variety and importance of the subjects to which this form of quasi-legislation is applicable, it may be stated that orders in council, or royal proclamations which are usually issued in pursuance of the same, are promulgated for the assembling, prorogation, and dissolution of Parliament; for declaring war; for confirming or disallowing the Acts of Colonial Legislatures; for giving effect to treaties; for extending the terms of patents; for granting charters of incorporation to companies or municipal bodies; for proclaiming ports, fairs, &c.; for deciding causes on appeal; for creating ecclesiastical districts or circuits for judicial purposes; for granting exemptions from the law of mortmain; for the

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[1] Peel's Mem. v. 2, p. 131.

[m] Attorney-General *v.* Bishop of Manchester, L. R. 3 Eq. p. 436. And see Judge Ritchie in Windsor and Annapolis Ry. case, Nova Scotia Equity Decisions, v. 1, p. 307.

regulation of the Board of Admiralty, and of appointments to offices in the various departments of state; for creating new offices, and defining the qualifications of persons to fill the same; and for declaring the period at which certain Acts of Parliament (the operation of which has been left by the legislature to the discretion of the Queen in council) shall be enforced.[n]

When they require the sanction of Parliament.

It is difficult to draw the line between what may and what may not be accomplished by an order in council, without special legislative sanction. As a general rule, all orders in council restricting trade, unless issued under the authority of an Act of Parliament, or justified by reference to cases coming within the prerogative of war—and all orders suspending the operation of any statute—would require an Act of Indemnity. But when duly informed by the crown of the proceedings had upon any such occasion, Parliament has always been willing to indemnify the government for the timely exercise of authority for the public welfare, although it may have led to an overstepping of the constitutional limits of executive power.[o]

Proclamations.

So far as proclamations, as distinct from orders in council, are concerned, it is an indisputable branch of the royal prerogative to issue proclamations in reference to the existing state of the law, warning those who may be likely to commit offences, encouraging respect for the law, and offering rewards for the apprehension of offenders. These documents are regarded as solemn expressions of the royal will, and are invariably issued upon the advice of responsible ministers. They are usually based upon orders in council, and are

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[n] Rep. on the Privy Coun., Com. Pap. 1854, v. 27, p. 253. Rep. on Misc. Exp. *Ib.* 1847–8, v. 18, pt. 1, pp. 371, 377. The duration of the Endowed Schools Act, 1869, was limited to three years, with authority to her Majesty in council to renew it for another year without applying to Parliament. This power was exercised by order in council in 1872. Hans. D. v. 212, p. 340. And see 40 & 41 Vict. c. 38.

[o] See cases cited in Lieber's Hermeneutics, 3rd ed. 1880, p. 67 *n.*

intended to promulgate decisions arrived at by the sovereign in council. Their exact force has been a matter of dispute, which even now cannot be precisely determined, since it labours under the uncertainty which affects all questions bearing on the limits of the prerogative. It is clear, however, that while a proclamation cannot make a law, it can add force to a law already made.[p] When the sovereign declares war against a foreign power, proclamations are usually issued, materially altering the ordinary laws relating to trade, and imposing rules for the conduct of trade with neutrals or belligerents.[q] Proclamations are also issued to fix the mode, time, and circumstances of putting into execution certain laws, the operation of which has been left to the discretion of the executive government;[r] or, for the purpose of making formal declaration of existing laws and penalties, and of the intention of government to enforce the same; or, to appoint and direct the keeping of a day of observance, whether as a fast or thanksgiving. But 'proclamations have only a binding force when they are grounded upon and enforce the laws of the realm.'[s] And to be valid in law they must be published in the official gazette of the kingdom.[t] The king cannot authorise by proclamation the creation of an offence which is not a crime by the existing law; 'for if so, he might alter the law of the land by his proclamation.'[u]

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[p] See Forsyth, Const. Law, p. 180, *n.* Hallam, Const. Hist. v. 1, p. 337.

[q] See Cox, Inst. Eng. Govt. 28. Ed. Rev. v. 100, p. 192.

[r] Ex. gra 6 Geo. IV. c. 78. Municip. Corp. Act of 1835. Health of Towns Act of 1848. Royal Titles Act of 1876.

[s] Coke, 3 Inst. 162. See Lords' Debates, May 2, 1876, on the terms of the proclamation issued pursuant to the Royal Titles Act.

[t] Act 40 & 41 Vict. c. 41.

[u] Bowyer, Const. Law, p. 173. Att.-Gen. Collier, Hans. D. v. 203, p. 1370.

Control of Parliament over the issue of Orders and Minutes of Council, and other Departmental Regulations.

Minutes of council.

The responsibility of ministers to Parliament necessarily implies the right of either House to express its opinion as to the legality or expediency of any particular act of administration; and to proceed to call to account any minister of state who may have exceeded the limits of constitutional authority in the execution of public duty.

See the debate in the House of Lords May 12, and in the House of Commons June 25, 1817, upon the circular letter of the secretary of state for the Home Department (Lord Sidmouth) to the lords lieutenants of counties, respecting the authority and duties of magistrates, in regard to blasphemous or seditious libels; which letter was alleged to have been an interference with the ordinary course of justice, and an assumption by the executive of legislative power.[v]

In the working of constitutional government, experience has proved that certain subordinate powers of legislation must be entrusted to almost every leading department of state. So long as these powers are exercised with the knowledge of Parliament, and in direct subjection to its control, they can be more advantageously discharged by responsible ministers than if it were obligatory that they should emanate from Parliament itself.[w] For all such regulations are framed by a responsible minister, for the sanction of the crown. And no premature interference therein ought to be attempted by either House.[x] Minutes of council, departmental regulations, and other authoritative directions emanating from the heads of the principal

Departmental regulations.

[v] May, Const. Hist. v. 2, p. 188.

[w] See the Evid. of the Rt. Hon. R. Lowe, H. A. Bruce, and C. B. Adderley, and of Earl Granville, before the Com^e. on Education, Com. Pap. 1865, v. 6, pp. 54, 55, 68, 71, 72, 76, 153.

[x] Hans. D. v. 157, p. 342.

executive departments, must needs be frequently issued in regard to particular matters of administration, which require to be determined by competent authority, but it is essential that all acts of quasi-legislative authority which may be performed by any department of state, shall be within the limits defined and prescribed by parliamentary enactment; and also that, whenever either the expenditure of public money, or other great public interests, are concerned in the matters thus disposed of, an opportunity should be afforded to Parliament of expressing its opinion upon the same, before the government proceed to take action thereon.

Departmental legislation subservient to Parliament.

Precedents.

Shortly after the adoption of the order in council of April 10, 1839, creating a separate department of the privy council as a body to superintend the distribution of the moneys voted by Parliament for educational purposes, the proceedings of government in the matter were called in question in both Houses. On June 14, an address was moved in the House of Commons, praying for the revocation of the said order. After several nights' debate, this motion was negatived by a majority of 5 only, in a full House.[y] On July 5, in the House of Lords, a series of resolutions were agreed to, and embodied in an address to the Queen, deprecating the conferring of such important powers upon the committee of council without the consent of Parliament, and praying that no steps may be taken with respect to the establishment of any plan of national education without affording to their lordships an opportunity of fully considering the proposed measure.[z] On July 11, an answer was returned to this address, expressing her Majesty's regret that the House of Lords 'should have thought it necessary to take such a step on the present occasion'; and assuring their lordships that annual reports of the proceedings of the newly appointed Committee of Education would be laid before Parliament, 'so that the House would be enabled to exercise its judgment upon them.'[a]

Minutes of the Education Committee.

The Committee of Privy Council on Education, in 1861, framed a revised code of rules for the administration of the parliamentary grants for promoting education in England, which effected extensive alterations in the existing system of education as administered by the Privy Council. The government laid before Parliament the minute of council establishing the revised code on August 6, 1861,

[y] Mir. of Parl. 1839, p. 3195. [z] *Ib.* p. 3662. [a] *Ib.* p. 3815.

being the very day of the prorogation,[b] but without giving any explanations on the subject. However, as the new regulations were not to come into operation until after the next meeting of Parliament, when they were liable to be objected to by either House, it was probably deemed unnecessary to comment upon them on their first introduction. During the recess, the new code was subjected to considerable criticism, and elicited formidable opposition in many quarters. The complaints against it received full attention from the government, who, shortly after the reassembling of Parliament, laid before both Houses another minute, containing several modifications of the code. These changes, however, were not sufficiently comprehensive to satisfy the opponents of the measure. Accordingly, a discussion took place in each House upon the subject, wherein exception was taken, not merely to the re-revised code itself, but also to the mode of its adoption by the government. In the House of Lords, on February 17, 1862, Lord Derby called upon the ministry to embody the principles and leading details of the scheme in a series of resolutions, to be submitted to both Houses, in order to afford opportunity for mature deliberation thereupon. But this they declined to do. Mr. Walpole, who led the attack upon the code in the House of Commons, condemned the government for not having submitted it to Parliament in a series of distinct propositions, instead of as a whole. He said that 'he wished to raise the question whether, when any alteration is made in a system of education which the country has adopted, accepted, and acted on, it is to be in the power of any government, at any future period, by its own mere motion, and without the concurrence and sanction of Parliament, to alter that system fundamentally and entirely, in the manner they are now attempting to do. In 1839, this question was much agitated, and discussed in this House. There was then an attempt to introduce normal and industrial schools. That attempt was defeated; and one of the great objections urged against it was the manner in which the attempt was made. The House was told, and told truly, that the power which the committee of council asserted to itself was a power essentially beyond that which the constitution gave to any department in the state. It was the assertion by a body necessarily political in its character—necessarily fluctuating in its nature, which would be irresponsible, and therefore despotic—of an authority and power which does not belong to any minister, and which ought only to be entrusted to both Houses of Parliament.' With these views Mr. Walpole submitted to the House a series of resolutions, condemnatory of certain parts of the revised code, for the purpose of obtaining, in committee of the whole House, a full discussion of the

Revised Code of Education.

[b] Com. Jour. 1861, p. 427.

scheme, and the introduction of considerable changes therein. With the general principle of the code—as an endeavour to simplify the machinery for administering the grants of public money for the promotion of popular education, and an attempt to test the results of such education—he entirely concurred; but he considered the mode of effecting these objects, as set forth in the code, to be quite unpalatable to Parliament and to the country. In asking the House to adopt this course, he likened it to the proceeding in committee upon a government bill, the principle of which has been agreed to by the House, but which is subject to amendment of details at that stage of its progress. And in order to prevent a proceeding so objectionable as the present from being drawn into precedent by the government, Mr. Walpole appended two resolutions to his series, requiring the reprinting of the code in the January of each year, should any material alteration therein be proposed, and in a form to point out distinctly the intended changes; and declaring that, in the event of any revision or material alteration being proposed by the department at any time, it shall not be lawful to take any action thereon until the same shall have been submitted to Parliament, and laid on the table of both Houses for at least one calendar month.[c] [In order to bring the language of the minutes in this particular 'in accordance with the sense and spirit' of Mr. Walpole's resolutions, the government subsequently submitted to the Commons, February 17, 1865, a new rule to the same effect, which while it recognised the power of the department to alter the minutes, restrained any action upon such alterations until the documents had been laid before Parliament. Supplementary regulations on minor points, not included in the code, are laid on the table every year, with the report of the Education Department.[d]] By these resolutions it was his object to maintain that the committee of council, whilst entrusted with important administrative functions, had no legislative authority, but must submit for the sanction of Parliament all material changes in the national system of education before attempting to enforce them. Secretary Sir George Grey, on behalf of the government, acquiesced in the course suggested by Mr. Walpole, and also in the principle involved in the last two resolutions.[e] In compliance with the foregoing resolutions, the code was reprinted January 1863; and a new minute of some importance having been issued in the following May, the same was immediately submitted to Parliament, to lie upon the table for one month before it became law.[f] Whereupon the House went into committee on the proposed resolutions. Three days afterwards, the vice-president

Educational minutes to be laid before both Houses of Parliament.

[c] As to the proper construction to be given to these resolutions, see Hans. D. v. 171, p. 1042.

[d] *Ib.* v. 177, p. 327.

[e] *Ib.* v. 166, p. 52.

[f] *Ib.* v. 171, pp. 952 954.

of the Education Committee announced that the government were prepared to make important alterations in the new code, in order to render it more acceptable to Parliament and to the country. To afford time for the due consideration of these amendments, no further action was taken in the House on the subject until May 5, when Mr. Walpole stated that on account of the conciliatory and satisfactory conduct of the government, he was prepared to abandon his resolutions, and to accept the revised code in its amended shape. Thus ended a severe and protracted contest, wherein the right of Parliament to exercise a constitutional control over the executive government, in *quasi*-legislative matters—and in the settlement of all important details of administration—was amply recognised and sustained. In 1870, this principle was embodied in the Elementary Education Act, which provides (in sec. 97) that no minute of the Education Department, which defines the conditions upon which an elementary school shall be entitled to receive public aid shall be in force until it has lain for not less than one month on the table of both Houses of Parliament. By practice these thirty days are computed from the day on which the code was circulated amongst members, not from the day when it was formally laid upon the table of the House.[g]

Minutes of Education Committee.

It has also been acknowledged that the Education Department is bound to apply for the sanction of Parliament not merely to any minute which involves the expenditure of public money, but to any minute which modifies the departmental regulations previously submitted to Parliament.[h]

And it is understood that no important changes in the system of national education in Ireland should be introduced before they had been communicated to Parliament, although it is entirely within the province of the Irish Education Commissioners to alter or modify their rules without any action on part of government.[i]

How submitted for the approval of the House of Commons.

To assist the judgment of the Commons in this matter it has been customary for the member who represents the department in the House to make a statement in explanation of the changes effected by the new minutes, when he lays them upon the table.[j] At this stage,

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[g] Hans. D. v. 232, p. 1216.

[h] Com. Pap. 1864, v. 9, p. 309. Ev. 453, &c. Hans. D. v. 177, p. 327.

[i] *Ib.* v. 183, p. 1031.

[j] Com. Pap. 1865, v. 6, pp. 55, 72, 153. Hans. D. v. 185, p. 1147. *Ib.* v. 204, pp. 1813, 1827; v. 223, p. 225.

however, no debate should take place, as there is no question before the Chair.

Method of taking sense of the House.

The manner in which the sense of the House of Commons is taken in reference to new minutes of the Committee of Council on Education, when they have been laid upon the table, may be seen from the following cases.

On May 5, 1863, two resolutions were submitted to the House, by a private member, to declare the expediency of modifying the regulations of the code in certain particulars. After a long debate, one of these resolutions was withdrawn and another negatived. On March 10, and again on July 21, 1871, similar resolutions were proposed, and negatived. On May 5, 1874, a similar resolution was proposed, and negatived. On March 9, 1875, an address to a similar effect was moved, and negatived.

On March 8, 1864, a resolution was proposed for the modification of the rules in regard to aid to schools for the working classes. After debate, the government agreed to accept this resolution. On June 2 following, the mover, being of opinion that the new minute which had been issued in conformity with the said resolution did not meet the case, proposed another resolution, to declare the inadequacy of the minute to remove the objections entertained against the former minute; but the motion was negatived. On June 30 another resolution, condemnatory of the new minute, was proposed; but the Speaker ruled that it was out of order, being similar in substance to the one previously negatived.[k]

[See a resolution, agreed to by the House of Commons and accepted by ministers on March 4, 1873, defining and limiting the operation of a treasury minute in relation to county court judges.

On July 2, 1877, certain War Office circulars were objected to, in the House of Commons, on the ground that they had been issued in contravention of certain Acts of Parliament; but the secretary for war was able to show that the complaint was untenable.[l]]

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[k] See the comments of Ld. R. Cecil on this case, in his argument to show the inadequacy of the control of Parliament over minutes of Com. of Council on Education, Hans. D. v. 177, p. 1309.

[l] *Ib.* v. 235, p. 618.

CHAPTER IX.

LEGISLATION BY PUBLIC DEPARTMENTS.

Control of Parliament over executive legislation.

THE constitutional control of Parliament over the exercise of legislative powers by ministers of state, executive departments, and other public bodies, being admitted, it is evident that there is an undeniable advantage in the practice itself. The proper limits within which such powers may be exercised having been prescribed by statute with directions that all such minor or provisional legislation shall be duly submitted to Parliament, —either for *tacit* approval or direct ratification,—it is often expedient to entrust the settlement of the details of practical legislation, requiring special or local knowledge, to the public department immediately concerned therein. By this means the benefit of local experience is obtained in the determination of such questions, and especially where the consent of parties interested has been freely given,—Parliament is relieved from the consideration of matters which may be troublesome to decide, without infringing upon local interests. Within the past thirty years numerous Acts have passed, to confer and regulate the exercise of such powers, in subordination to general principles established by law.

Inclosure commissioners.

Thus, in 1845, by the Act 8 & 9 Vict. c. 118, the Inclosure Commissioners were constituted, and empowered, in certain cases, to complete inclosures, and in other cases to make provisional orders for the inclosure of lands, to be ratified by public Acts of Parliament.[a] A select committee of the House of Lords, in 1858, on private Bill

[a] May, Parl. Prac. ed. 1883, p. 760.

legislation, took much evidence in favour of an application of this principle to other measures of local improvement, but they refrained from any specific recommendation on the subject.[b]

Thus, by the Contagious Disorders of Animals Act of 1848, the Privy Council were empowered to make orders and regulations to carry out the intent of the Act, the same to be laid before both Houses of Parliament within a specified time.[c]

Again in 1866, upon the outbreak of the cattle plague in Great Britain, endeavours were made to frame an Act of Parliament to arrest the progress of the disorder, without injuriously affecting local interests. But, after much debate, the attempt proved unsuccessful. It was then determined to enlarge the powers conferred upon the Privy Council by the Act of 1848, and to empower any two lords of the council to frame orders to meet the emergency in particular parts of the country, such orders to be afterwards communicated to Parliament. Under this authority nearly 150 separate orders in council were issued.[d] The Act was continued in the following session, with enlarged powers.[e]

Questioning orders

The orders issued under the authority of the statutes aforementioned, though enjoined to be laid before Parliament, were not required to be directly or indirectly sanctioned by either House. But this did not prevent them from being questioned.

The mode of questioning these orders is shown by a proceeding in the House of Commons on June 21, 1867, when, as an amendment to going into committee of supply, it was moved to resolve that a particular order respecting the importation of cattle 'is inexpedient.'[f] But after an explanation by a minister the motion was withdrawn.

Should be submitted to Parliament.

It is customary to provide that orders in council, departmental regulations, representations, rules of court, or tables of fees, framed and issued under the authority of particular Acts of Parliament, shall be laid before both Houses within twenty, thirty, or forty days (as the case may be), after the making thereof,—or after the

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[b] Com. Pap. 1857–8, v. 12, pp. 12, 36, 45.

[c] 11 & 12 Vict. c. 107, secs. 4–6.

[d] Hans. D. v. 187, p. 864. Act 29 Vict. c. 15. Com. Pap. 1866, v. 59, pp. 213–297. *Ib.* 1867, v. 59, p. 1.

[e] 30 & 31 Vict. c. 125.

[f] Hans. D. v. 188, p. 349.

re-assembling of Parliament, should they have been issued during a recess[g]—(it is *usually added*), before they become operative and binding. But sometimes this restriction is omitted[h]—and it is sometimes expressly enacted that in the event of an order, or rule, being annulled in consequence of the disapproval therefore, by either House of Parliament, the rescinding thereof shall be 'without prejudice to the validity of any proceedings which may in the meantime have been taken under the same.'[i] If a scheme has been upon the table of both Houses for the prescribed time, without any address against it, it passes out of the hands of government, who can no longer delay its operation[j] Sometimes direct provision is made as to the *mode of objection* thereto.

A noticeable example of this is afforded by the Oxford and Cambridge University Reform Acts, passed in 1854 and subsequent years, which empowered the executive commission, or governing body, of the university, to frame ordinances, regulations, and statutes which should be laid before both Houses of Parliament, and, if not objected to by an address to be presented by either House within 'forty days,' be approved, by order of the Queen in council.[k]

Parliament the trustee of endowments.

It was laid down as a principle—by the commissioners appointed in 1864, to enquire into the management of endowed schools in England—'that Parliament is the only body that can be considered as the supreme trustee of endowments, and that in some form or other the approval of Parliament ought to be obtained to all schemes for the re-settlement of educational trusts.[l]

Pursuant to this report, the Act of 1869 was passed, which provided for the appointment of a small commis-

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[g] Acts 20 & 29 Vict. c. 112, sec. 3; c. 124, sec. 11; c. 125, sec. 26; 32 & 33 Vict. c. 42, sec. 8; 38 Vic. cc. 5 and 28.

[h] See 39 & 40 Vict. c. 57, and 40 & 41 Vict. c. 23.

[i] 38 & 39 Vict. c. 77, sec. 25, and c. 91, sec. 7.

[j] Hans. D. v. 234. p. 857.

[k] Oxford, Acts 17 & 18 Vict. c. 81, sec. 36; 25 & 26 Vict. c. 26, sec. 7. And see 32 & 33 Vict. c. 20. Cambridge, Act 19 & 20 Vict. c. 88, sec. 40.

[l] Com. Pap. 1867-8, v. 28, pt. 1, p. 635.

sion to draw up schemes and trust deeds for the re-constitution of the endowed schools. These draft schemes to be submitted to the governing bodies of the particular schools, and after due enquiry, to the committee of council on education, for their sanction. An appeal is allowed, in certain cases, to the Privy Council. Finally, *all* such schemes (unless objected to, by a petition) must be laid before both Houses of Parliament for 'forty days'

[Extended to 'four months' in the case of certain specified schemes which were submitted to Parliament in 1873 by Act 36 & 37 Vict. c. 7; amended and extended to 'two months' in all other cases by Act 36 & 37 Vict. c. 87, sec. 15].

If within that time either House address her Majesty to withhold her consent from any scheme, or any part thereof, the Crown can only assent to so much of the same as may not have been objected to.[m]

Withholding royal assent.

On June 30, 1871, an address was moved to the Queen, in the House of Lords, that for certain reasons therein stated her Majesty would withhold her assent from the proposed scheme of the Endowed School Commissioners for the management of Emanuel Hospital Charity School, heretofore governed by the Corporation of the City of London.[n] The motion was opposed by ministers, but agreed to on division. Immediately afterwards another address was moved praying that the royal assent might also be withheld from the schemes relating to St. Margaret's Hospital and the Greycoat Hospital, Westminster. No reason was assigned for the request in the motion; but the mover stated that these schemes were open to the same objections that had been urged against the first-mentioned scheme. Notwithstanding the opposition of ministers, this motion was agreed to.[o] On July 3 her Majesty's answer was reported, 'That she would withhold her assent from the several schemes objected to in these addresses.'[p] Subsequently the commissioners prepared a second scheme for Emanuel Hospital, which was more acceptable to the governors of that institution. On May 13, 1873, an address to the Queen was moved in the House of Commons, that

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[m] Act. 32 & 33 Vict. c. 56. sec. 41. Hans. D. v. 207, p. 300. *Ib.* v. 213, p. 551.

[n] The Corporation of London had petitioned Parliament, protesting against the proceedings of the commissioners in this case, Com. Pap. 1871, v. 55, p. 871.

[o] Hans. D. v. 207, pp. 862-902.

[p] *Ib.* p. 962.

the royal assent might be withheld therefrom. After a long debate the motion was negatived.

Provisional orders.

The General Inclosure Act of 1845,[q] first empowered commissioners to issue provisional orders for authorising the inclosure of commons, subject to the ratification of Parliament, instead of the method previously resorted to, of obtaining private Acts for such a purpose. In the execution of their powers, however, the commissioners did not sufficiently consider the general convenience and comfort of the neighbourhood interested in the preservation, as commons, of the lands in question, but were too ready to grant all applications for inclosures, on compliance with certain fixed conditions. Accordingly, in 1869, the House of Commons appointed a committee to investigate the matter, which recommended that no further inclosures should take place until a revised Inclosure Act had been passed. Whereupon, several years elapsed before the House again passed an Act to give effect to provisional orders for inclosures. And, in 1872, the inclosure commissioners reported that they had suspended their operations, until Parliament should have agreed upon a definite policy in regard to inclosures,—the government, meanwhile, making repeated attempts to pass a new Inclosure Act, but without success.[r] At length, on February 10, 1876, the home secretary brought in a General Inclosure Bill, which was agreed to by Parliament. Under this Act provisional orders may be issued for the regulation or inclosure of commons, after affording to all parties interested an opportunity of being heard for or against the proposal: such provisional orders to be afterwards subjected to the investigation of a standing parliamentary committee, who shall consider the details of the schemes, report thereon, and remit for the consideration of the

General Inclosure Bill.

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[q] 8 & 9 Vict. c. 118.

[r] Hans. D. v. 212, p. 488; v. 216, p. 133; v. 225, p. 1941.

inclosure commissioners any proposed modifications therein. Then the Bill to confirm the orders is to be introduced and passed.[s] Such a committee was first appointed by the House of Commons (upon the first report of the inclosure commissioners under the new Act) on February 26, 1877. It reported in favour of the confirmation of the proposed inclosures, subject to certain conditions, but not requiring the reconsideration of the schemes by the commissioners.[t]

The select committee on commons (to consider reports of the inclosure commissioners) appointed in 1877, was nominated in part by the House, and in part by the committee of selection. The inclosure commissioners appeared before the committee, and explained their course of proceedings under the new Act, and the mode in which their reports are investigated and dealt with by this committee.[u] All the necessary forms to be used under the Act are appended to the report of this committee.[v]

Prisons' Act.

In 1877 ministers having proposed that rules to be made pursuant to the Prisons' Act should not come into operation until they had been laid for forty days before both Houses of Parliament—an amendment was moved to require such rules to be distinctly approved by resolution of each House. It was urged that, in the present pressure of business, it would be difficult for an unofficial member to get an opportunity of moving adverse resolutions to these rules. On the other hand, it was stated that if special approval was obligatory, the House might be the whole session discussing rules on very trivial points. After much debate, the amendment was negatived and the ministerial proposal agreed to.[w]

By the Electric Lighting Act, 1882, the Board of

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[s] Han. D. v. 229, p. 1533; v. 230, p. 1034. Act, 39 & 40 Vict. c. 56.

[t] Com. Pap. 1877, v. 10, p. 39.

[u] *Ib.* Evid. p. 7.

[v] *Ib.* Appx. Nos. 1, 2, 3.

[w] Hans. D. v. 233, pp. 515–528. And see v. 234, p. 1801.

Trade is empowered to grant provisional orders authorising the supply of electricity for any public or private purpose, at their discretion, subject to confirmation by Parliament.[x]

This Act has given occasion to much criticism on the provisional order system. It is evident 'that the system can only be worked efficiently in conjunction with thoroughly comprehensive general acts applicable to each object for which provisional orders are recognised.'[y]

Report on legislation by means of provisional orders.

In vol. 7 of the Journal of the Statistical Society of Ireland (p. 138) will be found a Report of a Committee of the Society on Legislation by means of Provisional Orders, in England, Scotland, and Ireland, made on February 20, 1877. This report points out the progress and result of the provisional order system, during the thirty years in which it has been in operation, and the extent of its application, in each of the three kingdoms. Also, the extent to which a direct responsibility to Parliament has been introduced, both for the general principles and the details of such legislation, in particular cases. It suggests a larger application of the system to Ireland, as well as for reasons of economy, and to relieve the Irish people 'of the grievous burden' of legislation by local Bills, as also to secure a more general harmony in the local jurisdiction and local legislation of the different parts of the United Kingdom.

On February 25, 1881, an address to the Crown was moved in the Lords that the order in council for reducing number of divisions of High Court of Justice, and abolishing titles of lord chief justice of Common Pleas and lord chief baron, might not come into operation. This motion had been previously made, and withdrawn: it was therefore opposed, as unprecedented: and a motion to adjourn the House was carried.

Irish Coercion Act.

The Irish Coercion Act of 1881 requires that every warrant issued under it for the apprehension of offenders shall be laid before Parliament. This is 'a novel and mischievous attempt to control the exercise' of the powers intrusted to government, and it will give rise to discussions in particular cases which will be a serious hindrance to legislative work. 'The tendency of Par-

[x] See also the Educational Endowment (Scotland) Act, 1882.
[y] See further L. T. v. 75, p. 251.

liament to attempt an impossible supervision over the details of executive and judicial business is one of the causes of its increasing difficulties in overtaking its arrears of work.'[a]

St. Katharine's Hospital.

On July 28, 1871, a member of the House of Lords moved an address to the Queen, requesting that in any scheme to be agreed upon in regard to St. Katharine's Hospital,—formerly situated near the Tower, but since transferred to Regent's Park,—'due attention may be paid to the spiritual and educational necessities of the parishes adjacent to the old precincts of the hospital' (a royal commission of enquiry into the charitable foundation having advised that no local claims should be recognised in relation thereto).[b] The motion was opposed by ministers, but carried on division.[c] Her Majesty replied that she would take this address into consideration together with the report of the commission.[d]

On July 26, 1872, three several addresses were passed by the House of Lords praying that the royal assent might be refused to certain schemes of the Endowed School Commissioners. On August 1, her Majesty replied, 'That she would withhold her assent from these schemes.'

Endowed Schools Act.

Much dissatisfaction having arisen in regard to the proceedings of the commissioners under the Endowed Schools Act of 1869, the vice-president of the Education Board moved, on February 11, 1873, for the appointment of a select committee to enquire into the operation of that Act before renewing the powers of the commissioners, which were about to expire. He stated that the information to be elicited by this committee would be of much service to the government in determining upon the work to be done in future. Nevertheless, the government would act under a full sense of their own responsibility in the matter. The motion was agreed to.[e] The committee reported on June 17. They recommended the continuance of the Act, which would shortly expire, for three years, with power to the Privy Council to further extend it, for one or two years.

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[a] L. T. v. 70, p. 310.
[b] Com Pap. 1871, v. 16, p. 371.
[c] *Ib.* p. 943.
[d] *Ib.* v. 214, p. 289.
[e] Hans, D. v. 208, p. 384.

Commissioners report on endowed schools.

But they suggested some important amendments, chiefly to facilitate alterations, by the Education Department, at the instance of persons interested, to schemes submitted thereto by the commissioners. Also, that the period of consideration by Parliament of opposed schemes should be extended from forty days to two months, and that such period shall be within the same session. Unopposed schemes to be approved and enforced without being laid before Parliament.[f] Effect was given to these recommendations by the Act 36 & 37 Vict. c. 87, excepting that the Act of 1869 was extended for one year only, and not three years, as recommended by the committee. This necessitated renewed discussion in the ensuing session, when an Act was passed transferring the powers of the Endowed School Commissioners to the Charity Commissioners (37 & 38 Vict. c. 87). Accordingly on December 31, 1874, the Endowed School Commissioners presented a final report, which recapitulated all that they had done during their term of office. The special powers of the Endowed School Commissioners were further prolonged under a new commission by an Act 1875, c. 29.

In Mr. Gladstone's address to the electors of Greenwich on January 23, 1874, announcing the dissolution of Parliament, and again offering himself for re-election, he remarks that, 'the duties of Parliament have reached a point where they seem, for the present, to defy all efforts to overtake them. I think we ought not only to admit, but to welcome, every improvement in the organisation of local and subordinate authority which, under the unquestioned control of Parliament, would tend to lighten its labours and to expedite the public business.'[g]

By the Public Schools (England) Act of 1868, the governing bodies of the seven great public schools enumerated therein, are empowered to make or amend

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[f] Com. Pap. 1873, v. 8, p. 209. [g] London Times, Jan. 24, 1874, p. 8.

Powers under Public Schools Act.

any existing statutes or regulations relating to such school, under certain restrictions and limitations defined by the Act. These statutes to be approved by the special commissioners appointed under this Act, and afterwards by the Queen in council, before going into operation. If within a certain time the governing bodies of any of those schools shall fail to make the necessary statutes and regulations for the management of the same, the commissioners shall frame them, and submit them for the approbation of the crown; but with this proviso, that the approval or disapproval of the crown to any statute, &c., made by *the commissioners* shall not be signified until the same 'has been laid before both Houses of Parliament for not less than forty days.' So that if the governing body and the commissioners agreed as to a particular scheme it would not be necessary to submit the same to Parliament; but if they did not agree, any scheme framed by the commissioners must be laid before the two Houses.[h]

Pursuant to the statute aforesaid, two of the great schools (Eton and Westminster) re-constituted themselves. But the five other schools failed to do so. Consequently the power to frame their statutes devolved upon the special commissioners. Accordingly in February, 1870, the commissioners framed statutes, providing therein that the governing bodies of these schools should be exclusively taken from members of the Church of England.[i] Exception was taken to this restriction in the House of Commons;[j] and on April 5, 1870, an address was moved therein to her Majesty, requesting that the same might be expunged from the statutes, because in the Endowed Schools Act, passed in 1869, the principle of that limitation had been abandoned by Parliament.[k] Ministers consented to this address, but suggested an alteration in its terms, expressive of a desire that the statutes of the said five schools should be framed in accordance with the principle adopted in the Endowed Schools Act, viz., that, except in certain cases, religious opinion should not be a disqualification for membership in the governing body of a public school.[l]

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[h] Act 31 & 32 Vict. c. 118, sec. 10. And see Hans. D. v. 201, p. 188; v. 203, p. 1047.

[i] Com. Pap. 1870, v. 54, p. 520.

[j] Hans. D. v. 199, p. 1143.

[k] *Ib.* v. 200, p. 1379.

[l] *Ib.* v. 201, pp. 176–193.

Public schools.

Afterwards Mr. Russell Gurney (a commissioner under the Act) proposed an amendment, that the statutes should be referred back by the crown to the commissioners, 'in order that they might have an opportunity of reconsidering' the same, 'with reference to the principles applied in the Endowed Schools Act to other endowed schools.' This amendment was agreed to, and the address passed.[m] Her Majesty replied that she would give directions accordingly.[n]

Thereupon, the Public Schools Commissioners re-considered the matter, and removed the restriction objected to, as respected three of the schools, but retained it on behalf of Harrow and Winchester. The new statutes were laid upon the table. It was afterwards moved to resolve, that the continuance of the restriction in respect to the governing bodies of the aforesaid schools is inexpedient.[o] The motion was opposed by Mr. Gladstone (the premier) and others, on the ground that the commissioners were bound by the law and could not act on a principle of expediency, and that 'any resolution of the House against their determination would not be operative.' It was therefore negatived on division.[p] Meanwhile ministers brought in a short Bill, to continue the powers of the governing bodies of the seven schools, and of the special commissioners, for a further period. In committee thereon an attempt was made to add a clause, requiring *any* statutes made by the governing bodies of these schools to be laid before Parliament, before they should receive the royal sanction. But this was negatived, and the Bill passed.[q]

Subsequently by order in council of February 8, 1871, her Majesty disallowed the statutes framed by the special commissioners in February 1870, on behalf of the five great schools, but did not disallow the amended statutes in relation thereto, because it appeared they had been made in error, inasmuch as the crown had no right, upon the recommendation of the House of Commons, to send back the original statutes to the commissioners for reconsideration, but could only 'allow or disallow them.' At the same time, another Act was passed, prolonging the powers of the governing bodies of the seven schools, under the Act of 1868, to August 25, 1872, until when they should have the sole right to frame statutes for the government of the said schools. They could now take the initiative in the reconsideration of the whole question.[r] [By the Act 35 & 36 Vict. c. 54, their powers were further prolonged for another year.]

Notwithstanding the passing of this Act, the House of Commons on June 13, 1871, agreed to an address (on division) requesting the Queen to disallow the statute, laid upon the table, as above stated,

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[m] Hans. D. v. 201, p. 1683.
[n] *Ib.* v. 202, p. 676.
[o] *Ib.* v. 203, p. 978.
[p] *Ib.* p. 988.
[q] *Ib.* p. 1047. 33 & 34 Vict. c. 84.
[r] 34 & 35 Vict. c. 60. Hans. D. v. 204, p. 749.

whereby membership in the Church of England was made obligatory in appointments to the governing body of Harrow School. On July 7 the Queen's answer was reported : That she would signify her disapproval of that proviso.[s] The action of government in this case was condemned in the House of Lords by the archbishop of York, one of the commissioners under the Act of 1868.[t]

By the Act 32 & 33 Vict. c. 39, provisional orders for the government of hospitals, and other endowed institutions, in Scotland, after being drafted by the local authorities, approved by the parties interested, and issued by the secretary of state, may not go into operation until they have been laid before both Houses of Parliament for forty days, and no address has been presented by *either House* objecting to the same.

By the Act 32 & 33 Vict. c. 86, the Treasury may by a minute direct that certain statements, or returns, heretofore required to be laid before one or both Houses of Parliament, shall be discontinued, as being no longer necessary, provided that every such minute shall be laid before both Houses of Parliament for at least thirty days, and shall be inoperative if, within that time, a resolution against its coming into operation is passed by *either House*.

Consent of both Houses necessary.

The two following cases deal with *public funds*, appropriated by Parliament, so the consent of both Houses is necessary to confirm or annul the order.

Precedents.

By the Elementary Education Act, 33 & 34 Vict. c. 75, § 20, compulsory purchases of land for sites of school-houses may be made by the School Boards, with consent of the Education Department; but no such order shall be valid unless confirmed by a special Act of Parliament.[u]

By the Act 32 & 33 Vict. c. 110, § 16, the Treasury are empowered to fix a scale of fees to be charged by the Board of Charity Commissioners. But the same must be laid before both Houses of Parliament for thirty days, and if it 'be disapproved of by both Houses within one month,' such fees, or such parts thereof as shall be disapproved of, shall not be imposed.

The War Office having issued a circular of instructions to volunteers, defining their duty in affording aid to the civil power in cases of riot, a copy of the same was presented to both Houses of Parliament, on June 13, 1867. A debate arose in the House of Commons on June 28, upon a motion designed to express disapprobation of certain parts of this circular. Ministers denied that it was intended to bear the objectionable construction placed upon it, but expressed

[s] Hans. D. v. 206, p. 2044; v. 207, pp. 347, 1314.

[t] *Ib.* v. 207, p. 1279.

[u] For an Act to confirm such orders, see 37 & 38 Vict. c. 96.

themselves willing to reconsider the terms thereof. The motion was then put and agreed to.[v] A similar discussion arose in the House of Lords, but assurances being given that the circular would be reconsidered, no motion was made.[w]

By the Act 36 & 37 Vict. c. 48, § 29, general orders made by the railway commissioners for regulating proceedings before them must be submitted to the lord chancellor for his approval, and afterwards submitted to both Houses for 'two months,' during which they are liable to be disapproved, in whole or in part by *either House*, in which case the order so objected to shall have no force or effect.

A departmental regulation discussed in House of Commons.

In further illustration of parliamentary interference in a case where the requirements of law appear to have been disregarded by a mere departmental regulation, see the discussion in the House of Commons on April 3, 1865, upon a member calling attention to the conduct of the chief commissioner of police in refusing to allow the metropolitan police to flog juvenile offenders under the order of magistrates, although they were required to inflict such punishment by law.[x]

Necessary caution of Parliament in entrusting legislative powers.

These examples will suffice to show that the practice of entrusting legislative powers, under certain restrictions and limitations, to executive departments is increasingly resorted to by Parliament. But admitting its obvious advantages, it is liable to serious abuse. It has been well observed that there 'is no modern innovation which needs to be watched with more jealousy than the practice of delegating the authority of Parliament (even in small and local matters), with no better check than the chance that some unusually vigilant legislator may move an address to reject the scheme of law before it has had time to mature into an indefeasible enactment. The whole scope and genius of our legislative system is to afford by the forms of Parliament every possible security that no law shall be made which has not been deliberately and repeatedly affirmed in all its details, and it would be alien to the essence of free government to substitute for this a system in which the relations of the crown and Parliament should be reversed, and statutes should be *octroyés* by the government, and nothing but a bare veto left to the Lords and Commons.'[y]

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[v] Hans. D. v. 188, pp. 728-744. [y] Sat. Rev. May 7, 1870, p. 602.
[w] *Ib.* p. 751. [x] *Ib.* v. 178, p. 719. And see Hans. D. v. 187, p 69.

Curtailment of powers of judicial tribunals.

In 1870 the lord chief justice of England and all the judges unanimously concurred in protesting against the powers proposed to be conferred, by the High Court of Justice Bill, upon a committee of the Privy Council to make or alter the law relating to the constitution, procedure, or practice of the court, notwithstanding that the new rules were to be afterwards laid before Parliament. They contended that 'subordinate rules of procedure and practice' should be left to be settled by the judges of the new court, and that 'the more important matters of procedure ought to be considered and determined by Parliament,' and 'certain fixed guiding principles and rules' thereupon embodied in the Bill, so as to maintain 'the principle that the judicature should be in all respects independent of the executive.'[a] Similar objections were made in the House of Lords to conferring such large quasi-legislative powers upon the Privy Council, as giving to the executive government great and unconstitutional preponderance in dealing with matters that ought to be determined by Parliament.[b] In deference to these opinions, ministers agreed that the proposed rules should have the direct sanction of Parliament before the Bill came into operation.[c] In this shape the Bill passed the Lords, but it was withdrawn in the House of Commons before the second reading. In 1871 these measures were not reintroduced, though preparations were made for introducing them in an improved shape.

In 1872 Lord Chancellor Hatherley introduced a Bill entirely confined to the final appellate jurisdiction as exercised by the House of Lords and Judicial Committee of Privy Council.

In 1873 Lord Chancellor Selborne brought in a Bill for constituting a supreme Court of Judicature, and to refer part of the jurisdiction of the said Judicial Committee to it. He embodied in his Bill the main points of procedure, so that this important matter should not be left to an external authority, but be dealt with by Parliament itself. But power was also given to supplement these rules by order in council. The said rules to be subject to objection by either House of Parliament, to be signified by an address passed within forty days, in which case their operation would be annulled.[d] The new Bill, which became law, broadly and intelligibly laid down the principles upon which the courts should proceed in carrying out the new law reforms.[e] Nevertheless, in 1875, Lord Chancellor Cairns proposed a Bill to amend the Judicature Acts, and to allow the rules to be enacted by order in council, on the recommendation of the judges;[f] all such rules, however, to be laid before both

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[a] Com. Pap. 1871, v. 58, p. 259.
[b] Hans. D. v. 201, pp. 1564–1589.
[c] *Ib* p. 1022.
[d] Hans. D. v. 214, p. 348; 36 & 37 Vict. c. 66, § 68.
[e] *Ib.* v. 216, p. 613.
[f] Sat. Rev. Feb. 20, 1875, p. 240. Hans. D. v. 22, p. 118.

Houses for forty days, and if disapproved by either House to be annulled, but without prejudice to the validity of past proceedings under the same.[g] One hundred days were allowed for objections to rules under the Irish Judicature Act, 40 & 41 Vict. c. 57, § 69.

Growth of provisional legislation.

The system of authorising matters of local concern to be dealt with by the issue of provisional orders under the general authority of Parliament originated in 1845, in the case of inclosures of lands, pursuant to the Act 8 & 9 Vict. c. 118. At first the orders issued under this Act did not require parliamentary confirmation. But by the Act 15 & 16 Vict. c. 70, passed in 1852, all *such* provisional orders must be confirmed by Parliament before the inclosures are proceeded with. Since then there has been a gradual and successful extension of the principle of provisional legislation to other matters of local concern.[h] This has contributed very materially to relieve the Imperial Parliament from the great and growing pressure of local business, and to ensure the determination of such questions after previous enquiry by tribunals more competent for their satisfactory settlement.[i] By various Acts of Parliament authority has been given to the Home Office, the Board of Trade, the Local Government Boards, the Inclosure Commission, the Charity Commission, the Commissioners of Public Works (Ireland), the Education Department, and other departments of state, to grant provisional orders or certificates, and to approve of schemes for the construction, improvement, or management of particular works, or local affairs, which have hitherto required the direct sanction of Parliament; or else have been undertaken by the executive government upon its own responsibility.[j]

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[g] 38 & 39 Vict. c. 77, § 25.

[h] Com. Pap. 1877, v. 68, p. 169.

[i] FitzJames Stephen on Parl. Govt. in Cont. Rev. v. 23, p. 1.

[j] May, Parl. Prac. ed. 1883, pp. 760-767, 787. Mr. Bruce, Hans. D. v. 210, p. 320.

By the use of such machinery legislation is simplified, while the supervision and control of Parliament is maintained. For the enabling statutes invariably require the departments from whence a provisional order, certificate, or scheme may issue, to lay the same before both Houses of Parliament for confirmation.[k]

Simplifies parliamentary legislation.

There will always remain a large number of applications, *e.g.* where compulsory powers are sought, or where there are strong competing interests, which must necessarily be initiated and proceeded with in the ordinary manner by Bill; but it is a manifest advantage to permit the promoters of schemes locally approved, and involving no serious principle, to have recourse to provisional orders—which can be obtained at a comparatively moderate cost—thereby lightening materially the burden of private business before parliamentary committees, while the hearing and adjudication of all important questions, and the final decision in all cases, are still reserved to Parliament.[l] The sanction of Parliament is given to provisional legislation by an act which in its progress through Parliament is treated as a public Bill. Such Bills either (as in the case of provisional orders under the Public Health Acts or Inclosure Acts) refer to the particular orders in the body of the confirming Act, and enumerate them in a schedule; or (as in the case of orders issued in relation to fisheries, harbours, or railways) set them out at length in the schedule of the confirming Act.

Advantages of provisional orders.

For a complete list of all public general Acts of Parliament to confirm provisional orders, schemes, &c., passed up to 1874, see Appendix to Chronological Index to the Statutes, published by

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[k] For a return of the several Acts authorising the issue of provisional orders, &c., by any public department, see Com. Pap. 1871, v. 58, pp. 397, 403.

[l] Com. Pap. 1872, v. 54, p. 314. And see the evidence of Mr. Wyatt, an experienced Parly. agent, as to the working of the provisional order system, with suggestions for an amended procedure, *Ib.* 1877, v. 16, pp. 581, 638.

Provisional orders.

authority in 1874. Since 1866, however, such confirming Acts are not invariably printed in the public general statutes.

When the orders are merely referred to in the Acts, and not set out, they are rarely discussed in detail, but are confirmed or rejected without change.[m]

All persons aggrieved by any provisional orders have a right to petition Parliament against them, as they would against a private Bill. Their objections will be carefully considered by the House wherein the petition is presented, before the order is confirmed.[n]

Ample power is thus secured to Parliament to control and amend all provisional legislation; a power which is sometimes exercised to alter or to reject particular orders.[o]

On June 26, 1871, in committee on a Bill to confirm certain provisional orders of the Board of Trade in relation to tramways, all the orders for constructing tramways in London were struck out, on the ground that the requirements of the metropolis as a whole ought to be deliberately considered by Parliament, and not in a fragmentary manner.[p]

In 1872, a joint committee of both Houses was appointed to enquire into the question of metropolitan tramways, which reported on June 17. On July 3 resolutions were agreed to by the House of Commons, authorising the suspension of further proceedings with reference to any metropolitan tramway Bills of the present or previous session, in order that the same might be reintroduced next session, at the discretion of the promoters.[q]

But even if no formal confirmation by *Parliament* is required on behalf of a local scheme, authorised by executive authority, a mere direction in the enabling

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[m] Com. Pap. 1867-8, v. 28, pt. 1, p. 635.

[n] See Mr. Coates' evidence before Com. Com^e. on the Tramways Bill, Com. Pap. 1870, v. 10, p. 691; S.O. H. of Com. 1871, No. 146; Act 35 & 36 Vict. c. 79, § 45. And see Mr. Wyatt's evidence before Com. Com^e. on Tramways in Com. Pap. 1877, v. 16, p. 581.

[o] See Act 34 Vict. c. 3, to empower committees on Bills confirming provisional orders, to award costs and examine witnesses on oath. And see Acts 27 & 28 Vict. cc. 58 and 93; 28 & 29 Vict. c. 59.

[p] Hans. D. v. 207, p. 639. And see Act 34 & 35 Vict. c. 69.

[q] Hans. D. v. 212, p. 582. Act 35 & 36 Vict. c. 43 was passed to authorise the Board of Trade to give effect to these resolutions.

statute, that the same shall be laid before both Houses of Parliament will justify legislative interposition, if need be, to ratify or amend it.[r] Provisional orders.

For some valuable notes on the *Provisional Order System*, pointing out certain serious defects in the working of it, see a paper by J. Norwood (on Private Bill Legislation).[s] Also Theodore Martin's pamphlet on Private Bill Legislation for similar objections.[t]

Hitherto the provisional orders made by government departments have dealt only with matters in which the capital at stake was small, the parties affected generally agreed, and the opinion of the locality specially interested could be easily ascertained. But on March 15, 1872, Mr. Dodson (the chairman of committees) submitted to the House of Commons a series of resolutions, to provide for substituting, as far as possible, an extended and improved system of provisional orders for the present system of legislation on local and personal Bills. Such orders to be obtained on application to a permanent tribunal of a judicial character, which should hold its sittings in various parts of the United Kingdom, and before which promoters and opponents should be heard in open court; the decisions of this tribunal to be submitted for the confirmation of Parliament. In case of either House admitting an appeal against any decision of this tribunal, the same to be referred to a joint committee of both Houses, to be composed in the manner recommended in 1869, by the joint committee on the despatch of business in Parliament. After a brief debate on these resolutions, their further consideration was adjourned.[u] Upon a resumption of the debate, it appeared that, while members were generally in favour of a further extension of the system of provisional orders, they were scarcely prepared to depute to any body outside of Parliament the determination of such questions. Finally, the House agreed to

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[r] See the Huddersfield Burial Ground Act, 15 & 16 Vict. c. 41. May, Parl. Prac. ed. 1883, p. 788.

[s] Irish Stat. Soc. Journ. v. 6, p. 430.

[t] L. 1872.

[u] Hans. D. v. 210, pp. 17-30.

Provisional orders.

resolve, that the system of private legislation calls for the attention of Parliament and of government, and requires reform.[v]

Meanwhile, on June 13, Mr. F. S. Powell proposed a series of resolutions on private Bill legislation, with a view to the limitation of the same; but after a brief discussion the debate was adjourned. It was resumed on July 4, again adjourned, and not resumed. On June 17 the president of the Board of Trade (Mr. Chichester Fortescue) stated that the question was still under the consideration of government, although his own responsibility was mainly limited to an endeavour to ascertain how far the system of provisional orders could be improved and extended.[w] On June 17, 1873, the president of the Board of Trade stated that the various departments were steadily increasing the number of provisional orders issued by them; and the Board of Trade might reasonably extend the system by enabling local authorities to obtain such orders for the erection of gas and water works, instead of their being compelled to proceed by Bill. But he had failed to discover any other method by which government could extend the system.[x] In 1874, Mr. Dodson was asked whether he intended to reintroduce his above-mentioned resolutions of 1872. He replied that he preferred to leave the matter in the hands of the government.[y]

Meanwhile, in 1872, Mr. Theodore Martin, a parliamentary agent, published a pamphlet, in which he expressed his conviction, shared in, he believed, in the main by all his professional brethren, that the existing system of private Bill legislation is satisfactory to the suitors in Parliament, and that the reforms therein proposed by Mr. Dodson were objectionable.

Contracts entered into by Public Departments.

Public contracts.

An important question—akin in principle to that which has been just considered—has arisen of late years with regard to contracts, to be entered into between any department of the executive government and other parties, for the performance of any work or service, the undertaking of which has been, or may afterwards be, authorised by Parliament. It is manifest that the responsibility of entering into such contracts properly rests upon the executive alone. But it is equally clear

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[v] Hans. D. v. 210, pp. 507-529.
[w] *Ib.* v. 211, p. 1851.
[x] *Ib.* v. 217, p. 498.
[y] *Ib.* v. 218, p. 339.

that the government have no constitutional authority to make a contract which shall be binding on the House of Commons,[a] by whom the necessary funds for carrying on the contract must be supplied; and that the consent of Parliament should be first obtained to all new contracts.

Public contracts.

'It would not be wise to lay down the general and inflexible rule with regard to all our public departments, that it should be absolutely necessary before a contract for any service is entered into that a vote of Parliament should be taken for that particular sum.' Where the service is continuous, well defined, and involves no novelty, either in principle or action, it is customary to permit contracts to be entered into on the discretion of responsible departments before a vote is taken.[b]

On June 28, 1869, an amendment was proposed, in Committee of Supply, to reduce a vote for works on the Houses of Parliament by £2,500, with a view to censure the Office of Works for undertaking a new kind of decoration (with mosaics) in the Central Hall, because it had been contracted for previously to its being sanctioned by a parliamentary vote. After a short discussion, the amendment was negatived.[c] But on July 8, on the report of the resolutions, an amendment was again moved, to reduce the vote by £5,500 in order to prevent certain structural alterations of the Central Hall, as well as to condemn the decoration thereof with mosaic work. Another amendment was then offered by the commissioner of works (Mr. Layard) to reduce the vote by £3,000 only, as a guarantee that the proposed structural alterations in the Central Hall should not be undertaken until approved by Parliament. With regard to the mosaic work, for which contracts had already been made, he admitted that he had acted prematurely, and threw himself upon the indulgence of the House. His amendment was then agreed to.[d] On July 26 the matter was again brought forward, by a motion for the appointment of a select committee to enquire into the circumstances under which a contract had been made by the Office of Works with a private company for the decoration of the Central Hall of the Westminster Palace; but upon satisfactory explanations being afforded by Mr. Layard the motion was withdrawn.[e]

Furthermore, that if any contract be entered into by

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[a] See Smith's Parl. Rememb. 1860, p. 75. Judgment of the Court of Queen's Bench in the Churchward case, 1865, cited *post*, p. 772.

[b] Mr. Gladstone, Hans. D. v. 197, p. 1439.

[c] Hans. D. v. 197, p. 683.

[d] *Ib.* pp. 1429-1445.

[e] *Ib.* v. 198, pp. 708-720; v. 201, p. 394. It was afterwards determined by the Board of Works to abandon the mosaic decorations, *Ib.* v. 203, p. 916.

Public contracts.

any executive department for work to be performed, the cost of which will exceed the amount already voted by Parliament for the service to be contracted for, such contract should expressly state that payments on behalf of the same would be made 'out of moneys to be voted by Parliament;' and that application should be made to Parliament for a further appropriation to cover such increase of expenditure. This would afford an opportunity to the House of Commons to express its disapproval of the matter, if it should think fit to do so.[1]

The principle of the control of Parliament, and especially of the House of Commons, over contracts, was first established, in the years 1859 and 1860, by a committee of the House of Commons appointed to enquire into certain transactions arising out of existing contracts for postal and telegraphic services. The proceedings of this committee, and of the House upon its reports, will come under review, in another part of this work (p. 767, &c.), in connection with the privileges of Parliament in matters of Supply. It will suffice here to state the conclusions arrived at, as the result of this enquiry, for the purpose of ensuring that due notice shall be given to Parliament of any contracts to be hereafter entered into by government, which may involve prospective expenditure to an amount beyond that which has been actually voted by Parliament for any specified service.

Standing order concerning contracts.

By a standing order, adopted by the House of Commons on March 4, 1861, it is provided that 'the chairman of the Committee of Ways and Means shall make a report to the House previously to the second reading of any private Bill, by which it is intended to authorise, confirm, or alter any contract with any department of the government, whereby a public charge has been or may be created; and such report, together

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Hans. D. v. 217, p. 1100.

with a copy of the contract, and of any resolution to be proposed in relation thereto, shall be circulated with the votes two clear days at least before the day on which the resolution is to be considered in a committee of the whole House, which consideration shall not take place until after the time of private business; nor shall the report of any such resolution be considered until three clear days at least after the resolution shall have been agreed to by the Committee.'[g]

Mail and telegraph contracts.

Moreover, in all new contracts for the conveyance of mails by sea, or for the purpose of telegraphic communications beyond sea, it has been resolved by the House of Commons that a condition shall be inserted that they shall not be binding until they have been approved of by a resolution of the House.[h]

It is understood that all contracts should come before the House in such a state as that the House should be free to express its opinion thereupon, without incurring any pecuniary responsibility to the contractors.[i] But it is undesirable to fetter the government, or the House, by the adoption of an abstract resolution in regard to the terms upon which all postal subsidies shall be granted hereafter.[j]

In the years 1863 and 1867 special resolutions were passed by the House of Commons, approving of contracts which had been laid upon the table,—before the expiration of the month.[k] But this was done under peculiar and exceptional circumstances. As a general rule, it has been agreed that 'the House should not be asked to share in the responsibility of the details of mail contracts,' and that it is 'far better that they should come into legal force on the sole responsibility of the executive, after an opportunity of rejecting them (by their

[g] Com. Jour. 1861, p. 89. S. O. H. of Com. 1862, No. 78.

[h] Com. Jour. July 13, 1869.

[i] See debates on a proposed contract for the conveyance of the India, China, and Australia mails, Hans. D. v. 189, pp. 658-702, 1561.

[j] Hans. D. v. 190, pp. 2010-2020.

[k] Com. Jour. 1863, pp. 389, 404. Hans. D. v. 190, p. 450.

Contracts. remaining for one month upon the table) had been afforded to the House, than that the House should be called upon to affirm them by a positive vote.'[l]

In the event of any such contract being disapproved of, it is of course necessary that a substantive resolution should be proposed in relation thereto.

Thus, on March 20, 1863, a resolution was moved to declare that the House was not prepared to grant a sum of money to the Galway Packet Company, whose contract had expired, but was proposed to be renewed. The motion was negatived, on division. On July 21, on the motion of the secretary to the Treasury, it was resolved (without debate) that the new contract with this company be approved. On March 12, 1869, on motion of a private member, the contracts entered into by the postmaster-general with Messrs. Cunard & Co. and Mr. Inman, for the conveyance of mails to the United States, were referred to a select committee, ministers consenting thereto.[m] The committee reported in April, and on June 1 resolutions to enforce a more stringent rule in the submission of contracts to the judgment of the House were moved, but after long debate were withdrawn; the government having announced their intention to amend the present rule by substituting a plan whereby the judgment of the House should be distinctly taken upon every contract that might be hereafter laid upon the table.[n] [This pledge was carried out by an amendment of the rule, which was agreed to, and made a standing order, on July 13, 1869.[o]] Another resolution, in regard to negotiations with the United States Government for a reduced rate of postage, which was proposed at the same time, being amended at the suggestion of ministers, was agreed to.[p]

Though confined, in the letter, to a particular class of contracts, the above-mentioned resolution,—requiring that Parliament shall be notified of the intention of the government to enter into contracts which involve prospective expenditure, not limited to the service of the current financial year,—embodies a principle which is susceptible of general application. In the proceedings

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[l] The chanc. of the ex. (Mr. Gladstone). Hans. D. v. 172, p. 1201.

[m] Hans. D. v. 194, p. 1281.

[n] *Ib.* v. 196, pp. 1128, 1156.

[o] See also May, Parl. Prac. ed. 1883, p. 655. For the Canadian law, requiring all postal service contracts to be laid before both Houses of Parliament, see 29 Vict. c. 5.

[p] Hans. D. v. 196, p. 1159.

of the House of Commons, in the years 1862 and 1863, in granting supplies for the purpose of constructing fortifications on the British coast, this principle was emphatically asserted, and notwithstanding the opposition of government, a clause was introduced into the Bill for providing funds for this purpose, declaring that whenever a contract shall be entered into by government which involves the expenditure of a greater amount than had been actually granted for such service, such contract shall not be binding until it has lain for one month on the table of the House of Commons without disapproval, or has been formally approved of by resolution, within that period. This clause was agreed to by both Houses, and forms part of the statute.[q]

What contracts require the approval of the House of Commons.

But, in 1874, ministers declined to present to Parliament a copy of the contract for building the new courts of justice, on the ground 'that it would be injurious to the public service and unjust to the contractor.'[r] But in reply to a question, the House was informed of the amount of the contract.[s]

The remedy against illegal or oppressive acts by Ministers of the Crown.

If a minister of the crown be guilty of any abuse of authority, or dereliction of duty, he is personally liable, under the law and constitution, for his conduct.[t] But, in determining the liability of a public functionary for damage caused by his act to a fellow-subject, a seeming conflict between principles is noticeable, and an anxiety in the breast of the law on the one hand to assist the suitor, who perchance complains of wrong,

Responsibility of ministers for illegal acts.

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[q] 25 & 26 Vict. c. 78, § 2. See Smith's Parl. Rememb. 1862, p. 140. And see further on this subject, *post*, p. 767.

[r] Hans. D. v. 218, p. 345.

[s] *Ib.* p. 628. For previous debates in the H. of Coms. in regard to the erection of the Law Courts, see Hans. D. v. 210, v. 216, and v. 217.

[t] Att.-Gen. in Hans. D. v. 176, p. 2121.

and on the other to protect the officer who, inflicting an apparent injury, has perchance but done his duty.[u] Any direct infringement of the law of the land by a minister or officer of the executive government would render the offender liable, in a court of justice, to precisely the same consequences as if he were a private person. Nor would it be any justification, in an English court of law, to plead the command of the sovereign as the warrant for an unlawful act.[v] It may be stated, as a general principle, that in assuming on behalf of the crown a personal responsibility for all acts of government, ministers are privileged to share, with the crown, in a personal immunity from vexatious proceedings, by ordinary process of law, for alleged acts of oppression or illegality in the discharge of their official duties,[w] and are responsible to Parliament alone for acts of misconduct in their official capacity. Nevertheless, the courts of law have established certain rules which, so far as they go, afford protection to the subject against the irregular exercise of executive authority. Thus it has been determined that general warrants, issued by a secretary of state to search for and seize the author—or the papers of an author—(not named) of a seditious libel, are illegal.[x] Also, that a warrant issued by a secretary of state, to seize the papers (generally) of the author (named) of a seditious libel, is illegal.[y]

Immunity of ministers in courts of law.

General warrants.

Unity of responsibility in the Cabinet.

By a decision of the Superior Court of Lower Canada, in 1875, it was ruled, that an act of government cannot be set aside in a court of law, on the allegation that a majority of cabinet ministers had sanctioned it, upon the representation and influence of particular ministers, and (as it was afterwards alleged)

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[u] Broom, Const. Law, p. 525.

[v] See *ante*, p. 265.

[w] See *ante*, p. 343.

[x] Leach *v.* Money; 19 State Trials, p. 1001. Wilkes *v.* Wood, *Ib.* p. 1153.

[y] Entick *v.* Carrington, *Ib.* 1030. Broom's Const. Law, 525-617. See the proceedings in relation to General Warrants, Parl. Hist. v. 16, p. 207. Hans. D. v. 77, pp. 905, 960.

upon insufficient grounds; for 'there is no division of responsibility in a cabinet,' and 'the crown must be held to have known what it was about.'[a]

This was an attempt, on behalf of a new ministry, to set aside a transaction in real estate, authorised by their predecessors in office. The court dismissed the action, for the reason stated above. The irresponsibility of ministers of the crown in a provincial government to a court of law for advice given to the crown, and acts consequent thereupon, was further maintained by the superior court, in December 1877, in another action growing out of the same case.[a]

Protection to officials.

Apart from the security afforded to the subject by these decisions, the law accords to persons who are clothed with an official character a peculiar protection. On grounds of political expediency all such persons are preserved from liability to actions at law. Whether the alleged liability arises out of contract or out of tort, or from any matter of private and individual complaint against a minister of the crown, for acts done, or directed to be performed by him, in his official capacity, the ordinary tribunals of justice will afford him special immunity and protection.[b] But if ministers of the crown think fit, for reasons of public policy, to take upon themselves the responsibility of directly infringing an existing law, they are bound to apply to Parliament for an Act of Indemnity, to relieve themselves, and those who have followed their directions in the particular matter, from the legal consequences of their conduct. On the same principle, the government is bound to compensate all subordinate officers for losses

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[a] Att.-Gen. *v.* Middlemiss, L. Can. J. v. 19, p. 263.

[a] L. Can. J. v. 21, p. 319. See also Molson *v.* Chapleau and Lynch, Montreal Legal News, v. 6, p. 222.

[b] Broom, Const. Law, pp. 617–623, 726. See also the case of Sullivan *v.* Earl Spencer, showing that the Lord-Lieutenant of Ireland was not to be held liable at law for an act done by him in his official capacity. Irish L. T. Rep. v. 6, p. 25; Hans. D. v. 236, p. 611. Also Palmer *v.* Hutchinson, before the Privy Council on appeal from Natal, 6 L. R. App. p. 619. And see cases cited in Forsyth, Const. Law, pp. 84–88.

incurred, or damages awarded against them, in the execution of their duties.

Admitting the civil irresponsibility of the supreme power (including ministers of state) for tortious acts, it cannot be denied that its agents, the minor functionaries of government, are responsible to the law for illegal proceedings, beyond the legitimate scope of their derived authority, just the same as they are indictable for corrupt practices or misdemeanour in office. But the government is morally bound to indemnify its agent for the consequences of its own acts, otherwise a public servant might have to answer to the law for acts *bonâ fide* done by him, on behalf of the public, which, in contemplation of law, injuriously affected others.[c]

Their responsibility to Parliament.

The constitutional remedy against an executive government, for political crimes, or misdemeanours, which may operate injuriously to private individuals—or against a minister of state who may be guilty of injustice or oppression in the exercise of his administrative functions—is by an appeal to Parliament; and more especially to the House of Commons. Attempts to obtain redress, under such circumstances, by resort to the courts of law are unavailing; inasmuch as such complaints are not properly cognisable by these tribunals, which have no jurisdiction to coerce or otherwise control high public functionaries.[d] Whereas, the House of Commons, as the grand inquest of the nation, is fully competent to investigate every case of ministerial abuse or misconduct, and to visit upon the offender the consequence of his misdeeds.[e]

In theory of law, the judgment and decision upon every matter of state is that of the sovereign, who acts,

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[c] See Broom's Const Law, pp. 243, 619–623, 719. Also Clode, Military Forces, v. 2, pp. 148, 177. Hans. D. v. 218, p. 488; v. 219, p. 449. Thomas, Const. Law, p. 71. See also Canada Supreme Ct. Rep. v. 7, p. 570; v. 8, p. 1.

[d] See Cooley's article in Inter. Rev. v. 3, p. 326.

[e] See Judgment of Court of Queen's Bench in case of The Queen *v.* The Lords of the Treasury. L. T. Rep. N.S. v. 26, p. 65; and debates theeron in Hans. D. v. 210, pp. 51–72; v. 211, pp. 504, 1868. And see Wallace *et al* v. Ross. 2 Russell and Chesley, N. Scotia Rep. p. 190. See Hans. D. v. 180, pp. 1019–1022; and see *post*, v. 2.

according to his discretion, upon advice given him by a responsible minister, who is sworn to keep the king's counsel secret, and who may not disclose elsewhere the nature of the advice given, without his sovereign's express permission. Nor is this secrecy enjoined merely as a personal privilege or protection to the sovereign or the minister, to be waived as they may think fit; it is founded upon constitutional principle and public policy which unite in recognising the importance of entire and unfettered freedom in any advice to be given to the sovereign, and the necessity for preserving the king's counsellors from being harassed by actions on false pretences of malice or corruption.[f]

Sworn to keep the king's counsel secret.

Every minister is directly responsible to Parliament for his conduct in office, and for the advice he tenders to his sovereign; but he is responsible to no other tribunal. If he be put upon his trial by Parliament, it is right that he should be at liberty to disclose the secrets of the council chamber, so far as they may affect his personal responsibility for the acts under review; and permission to that end is invariably accorded by the sovereign. But it is not right for a minister to disclose before a jury, or before an ordinary court of law, the counsels of the crown, because these tribunals have no power to follow up the matter, and to sit in judgment upon the advice given to the sovereign by her ministers, or upon the acts of the sovereign consequent upon such advice. And even if, on any particular occasion, permission to divulge the advice given by a minister should have been granted by the sovereign, for the purpose of evidence in a court of law, it is very doubtful whether the court would be justified in allowing the disclosure to be made. In the case of Irwin *v.* Grey, where the secretary of state for the home department had been summoned as a witness, the

Council secrets not to be divulged in a court of law.

[f] See the American practice, to the same effect, in Am. Law. Rev v. 11, p. 164.

court would not permit him to be questioned as to the advice he had given to his sovereign; and the case was stopped by the judge, with the concurrence of the court.[g]

On the same principle, public officers, summoned to give evidence in a court of law, may attend with official documents in their custody; but if in the opinion of the secretary of state it should not be for the benefit of the public service that the documents should be produced, instructions are given to the officer to state that circumstance to the judge, who then invariably refuses to allow the production of the documents.[h]

Legal immunity of cabinet ministers.

In the case of Dickson *v.* Combermere and others, General Peel, the secretary of state for war, who was one of the defendants, attended, and gave evidence before the Court of Queen's Bench in defence of an official act of his own, which had led to the removal of the plaintiff from the lieutenant-colonelcy of a regiment of militia. This evidence involved the disclosure of advice he had tendered to the Queen in regard to the removal of Colonel Dickson; and he informed the court that he had obtained her Majesty's permission to divulge the same. But after he had given his testimony, the chief justice informed the jury that the secretary of state was responsible to his sovereign and the country for the recommendations he had made to the sovereign in this matter, and not to them; and that, unless they were of opinion that he had dishonestly and corruptly abused the power entrusted to him, they could not hold him accountable for his conduct. The plaintiff's lawyer at once admitted the correctness of this decision, and withdrew the case so far as General Peel was concerned.[i] In charging the jury upon the case of the other defendants, who were high military functionaries, acting under the immediate direction of the secretary of state for war, the chief justice stated that unless the jury were of opinion that the matters of complaint against Colonel Dickson, which occasioned his removal from office, had been maliciously and unreasonably put forward, with a view to his oppression and injury, and without probable cause, they must find for the defendants. And that even if they thought that General Peel, in recommending the sovereign to displace Colonel Dickson, had acted harshly and wrongfully, they could not on that account set Colonel Dickson right by returning a verdict in his favour. Accordingly, a verdict was returned for the defendants. The reporter, in commenting upon this case, points out very forcibly that according to the analogy of the decision arrived at in

[g] See *ante*, p. 346. 3 Fost. and Fin. p. 636.

[h] Home Sec. Cross. Hans. D. v. 225, p. 874.

[i] Dickson *v.* Visct. Combermere, &c. 3 Fost. and Fin. pp. 578–585.

the above-mentioned case of Irwin *v.* Grey, as well as upon general grounds of constitutional reasoning, the court ought not to have permitted the disclosure by General Peel of the advice he had tendered to his sovereign in his capacity of privy councillor. The arguments adduced by the reporter in support of this position are elaborate and convincing, and amply justify his conclusion that 'the secretary of state, by reason of his high office and dignity and the proximity of his position to that of the sovereign, is protected from all liability by action and all responsibility save to his sovereign or to Parliament, for acts done by him in his office as secretary, or by way of advice to the sovereign as cabinet minister.'[j] Further, in the case of Cowing and others, against the secretary of state for war, in July 1876, and January 1877, when the master of the rolls refused an injunction, and decided against a petition of right sought for upon frivolous grounds, alleging that there can be no injunction against the crown, because the sovereign is the fountain of justice, and 'even if the crown could commit a trespass, a subject could not sue for it.'[k]

Established Church.

This view of the immunity which attaches to privy councillors and high functionaries of state, in the performance of their official duty, is corroborated and applied to all responsible ministers of the crown, who are entrusted with the direction of any particular department of government, by the decision in the case of Gidley *v.* Lord Palmerston.

Legal immunity of subordinate officers of state.

This was an action brought to recover, from the secretary-at-war, a certain sum of money claimed by a retired clerk of the War Office, as a part of his annual retired allowance, and which, though voted by Parliament for such service, had been withheld by Lord Palmerston, the secretary-at-war, for the purpose of liquidating certain liabilities incurred by the said Gidley, to persons for whom he had acted as agent. The court gave judgment for the defendant, declaring that 'on principles of public policy, an action will not lie against persons acting in a public character and situation, which, from their very nature, would expose them to an infinite multiplicity of actions; that is, to actions at the instance of any person who might suppose himself aggrieved; and though it is to be presumed that actions improperly brought would fail, and it may be said that actions properly brought should succeed, yet the very

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[j] Dickson *v.* Viscount Combermere &c. 3 Fost. and Fin. pp. 533, 534, *n.* 271. Hans. D v. 231, pp. 826, 829; *Ib.* v. 235, p. 600.

[k] Com. Pap. 1877, v. 69, pp. 267.

liability to an unlimited multiplicity of suits would, in all probability, prevent any proper or prudent person from accepting a public situation at the hazard of such peril to himself.'[l] Also in the case of T. G. Tufnell, who sought, by petition of right, to be indemnified for the loss of a permanent military appointment in consequence of his being compulsorily retired on half-pay. The petition was dismissed on the ground that the crown had an absolute right of dismissal in all such cases.[m]

Seeing then that it is an established principle in our constitutional system that ministers of the crown are accountable to Parliament alone for personal acts of misconduct, or dereliction of duty, in the discharge of their official functions, we shall hereafter explain the course to be pursued to substantiate before Parliament any just ground of complaint against an individual minister, and investigate the principles which have heretofore governed Parliament in the determination of such questions.[n]

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[l] 3 Bro. and Bingham, p. 287. And see the comments on this decision, in 3 Fost. and Fin. p. 535, *n.*

[m] L. T. Rep. N. S. v. 34, p. 838.

[n] See *post*, v. 2.

CHAPTER X.

ROYAL PREROGATIVE IN MATTERS ECCLESIASTICAL.

Prerogative in matters ecclesiastical.

THE next prerogative to engage our attention is that which provides for the supremacy of the crown in matters ecclesiastical.

This prerogative is exercised in three ways: (1) By the enactment of laws, with the consent of Parliament, to determine matters affecting the Church as a national institution, and by convening and licensing in certain cases the proceedings of Convocation. (2) By the appointment of bishops and other principal dignitaries of the Established Church. (3) By the jurisdiction of the crown over all ecclesiastical causes in the last resort.[a]

'All jurisdiction within the realm, spiritual as well as temporal, is derived from the sovereign alone'; that is to say, all jurisdiction which is of a coercive character, and which can be enforced by an appeal to any tribunal or court of justice. Spiritual authority which is exercised merely *in foro conscientiæ* cannot be enforced in a court of law. Moreover, 'the power of pronouncing judgment *in foro exteriori*, coactive judgments, having effects recognised by the temporal law, depends always (for its exercise by an ecclesiastical tribunal) on the temporal power.'[b]

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[a] See Cripps, Laws of Church and Clergy. Petersdorff New Abridgement, v. 6, p. 214. Ed. Rev. v. 128, p. 251. Dr Phillpotts, in Wellin. Corresp. 3rd S. v. 5. pp. 201, 220, 243.

[b] Stat. 26 Geo. III. c. 84. Statement by Dr. Phillpotts, Bishop of Exeter, in his corresp. with the Rt. Hon T. B. Macaulay, pub. by Murray in 1861, p. 7. See also Ed. Rev. v. 121, p. 153, Hans. D. v. 182, pp. 304–307.

Our remarks in regard to this prerogative will admit of the following arrangement:—(1) A consideration of the position of the Church of England in the mother-country. (2) Its position in the colonies. (3) Its position in foreign countries. (4) The obligations of the Act of Uniformity.

1. *The position of the Church of England in the Mother-country.*

Legal position of the Established Church.

The crown is the legal head of the Church established in the realm of England; the interpreter of the meaning intended to be conveyed by the Thirty-nine Articles, the Liturgy, and other recognised formularies of the Church; and the depository of the ultimate appellate jurisdiction in all causes and matters ecclesiastical.[c] All appellate authority which, previous to the Reformation, was exercised over members of the Established Church by the Pope, is now by statute vested in the Crown of England; and every court, ecclesiastical or civil, held in England must be held in the name and under the authority of the sovereign.[d]

The kingdom of England and Wales is divided into thirty-two dioceses, including that of Sodor and Man; the respective limits of which have been defined by Acts of Parliament.[e] By the laws of the realm no person can be consecrated to the office of bishop in the Established Church of England without the license of the crown to the dean and chapter for the election to that office of the person named in a letter missive accompanying the same. A royal mandate, under the great

[c] Royal Declaration prefixed to the Thirty-nine Articles.

[d] 25 Henry VIII. c. 19. 1 Eliz. c. 1. 16 Charl. I. c. 11. 13 Charl. II. c. 12. See debate in H. of Lords, Hans. D. v. 111, p. 598, on the Bishop of London's Bill on Appeals to the Privy Coun. from Eccl. Courts. The Ld. Chan. speech, in Hans. D. v. 168, p. 226. The Bishop of Oxford's speech, *Ib.* v. 184, p. 518. And Ld. Chanc. Cairns and Ld. Westbury, on the Supremacy of the Crown, *Ib.* v. 193, pp. 1227–1233. Montagu Burrows, Parliament and the Church of England, 1875.

[e] Act 6 & 7 Will. IV. c. 77 38 & 39 Vic. c. 34; 41 & 42 Vic. c. 68.

Established Church.

seal, for the confirmation and consecration of the proposed bishop is also necessary. And if the dean and chapter defer or delay their election above twelve days from the receipt of the license, letters patent may be issued by the crown, conferring the episcopal office upon the nominee of the crown. The confirmation of the election of a bishop by the archbishop is simply ministerial, and merely a matter of form.[f] The crown has no power, by its mere prerogative, to create new dioceses, in any part of the kingdom. It must have recourse, for such a purpose, to the supreme authority of parliament. The crown, as legal head of the Church, may command the consecration of a bishop to an existing see, but it has no right to create a new ecclesiastical corporation, whose status and authority should be recognised by the community at large. Accordingly, when four new bishoprics were constituted by Henry VIII., the assistance of Parliament was invoked to give effect thereto.[g] In 1836, when the bishoprics of Manchester and Ripon were constituted, and in 1875 upon the establishment of the see of Saint Albans, and ecclesiastical jurisdiction conferred upon the bishops, it was under the provisions of an Act of Parliament.[h] Suffragan bishops also are appointed under authority derived from parliament; and though the selection of two candidates for the office is vested in the particular archbishop or bishop on whose behalf a suffragan is to be nominated by the crown, it is not compulsory on the crown to choose either of them. Government may enquire as to the persons intended to be proposed as

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[f] 25 Henry VIII. c. 20, §. 14. See the case of Bishop Hampden, Q. B. Rep. N.S. v. 11, p. 483. And Arnould, Life of Ch. Justice Denman, v. 2, p. 237. And see J. W. Lea, on The Bishops' Oath of Homage, Rivingtons, 1875. And see Com. Debates on the Congé d'élire Bill in 1877.

[g] 31 Henry VIII. c 9. This Act is not found in the ordinary ed. of the statutes, but it is cited in the judgment of the Privy Council in the case of Bishop Colenso.

[h] 6 & 7 William IV. c. 77. 38 & 39 Vict. c. 34.

suffragans in any given case before consenting to entertain the question at all.[i]

Supremacy of the crown.

The sovereign of this realm, as being the 'supreme governor on earth of the Church of England,' has authority to control its 'external policy.'

In the Acts of Henry VIII. and of Edward VI., the king is styled 'the supreme head in earth,' next under Christ, of the Church; but as this phrase gave offence to many, and was rejected by Queen Elizabeth, it was changed, in her reign, to that of 'supreme governor.'[j]

Convocations.

All ecclesiastical synods or convocations of the Church must be convened, prorogued, dissolved, restrained, and regulated by the Queen. No convocation of the bishops and clergy of the Church of England can assemble except by the express authority and command of the crown. Such authority has usually been given at the summoning of every session of Parliament, and it is now agreed that the Convocations, or provincial synods, of the two provinces of York and Canterbury (which are the ancient ecclesiastical councils of the archbishops) are of right to be assembled concurrently with Parliament. By writs directed to the archbishops, respectively, the crown exercises the right of summoning and of proroguing Convocation.[k] But by the Act of Submission passed in 1532, the clergy have renounced the right to enact any new canons, constitutions, or ordinances, 'unless the king's most royal assent and license may to them be had, to make, promulgate, and execute the same.'[l] It has, indeed, been claimed, on behalf of the bishops of the Church of England, that they are at full liberty to assemble ordinary diocesan synods, to deliberate upon questions of faith and practice, but not to proceed to enact new canons, &c., without the previous

Diocesan synods.

[i] 26 Henry VIII. c. 14. Mr. Gladstone, Hans. D. v. 200, p. 987.

[j] Browne on the Articles, ed. 1864, p. 794. Hans. D. v. 207, p. 1213.

[k] Trevor on Convocations, pp. 126, 155.

[l] Stat. 25 Henry VIII. c. 19. See Hans. D. v. 170, p. 1269; v 180, p. 1160.

license of the crown.[m] But this is very doubtful;[n] at any rate, 'it is admitted that diocesan synods, whether lawful or not, unless with the license of the crown, have not been in use in England for above two centuries.'[o]

Convocation.

So far, at least, as convocation is concerned, all jurisdiction that may be exercised by Convocation must be subject to the authority and control of the sovereign. By virtue of the Queen's writ of summons, Convocation is empowered to deliberate upon matters affecting the interests of religion and of the Church. It is well known that, from the time of George I. (1717) until a very recent period, it was a regular practice for the crown to interpose and stop the deliberations of Convocation by a prorogation, immediately after they had formally assembled. But of late years a different policy has prevailed, and it has been deemed expedient that an opportunity should be afforded to the Church in Convocation to enter upon the free discussion of all ecclesiastical questions. If the crown wishes particular subjects to be discussed in convocation, a 'letter of business' is issued, directing the Consideration of Convocation to be applied to the subjects specified therein. But another instrument, namely, a 'royal license,' is required by the Act of Submission to warrant Convocation in enacting a new canon, or, as it is termed, 'alleging or putting in use any existing ordinance or canon;' in other words, passing any judgment, opinion, or sentence upon the question that has been debated.

Upon the assembling of the Convocations of Canterbury and York in February 1872, pursuant to the Queen's writ, royal letters of business, and a royal license, were severally issued for the purpose of enabling them to consider and report upon the matters contained in the Fourth Report of the Ritual Commission, and the

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[m] Joyce's Sacred Synods, p. 40; Pro. Church Congress. York, 1866.

[n] See arguments in Moore's P. C. C., N. S. v. 1, p. 434; and Bishop of Melbourne's Memorial, Com. Pap. 1856, v. 44, p. 142.

[o] Moore, P. C. C., N. S. v. 1, p. 464.

Convocations reported thereon.[p] A Bill was afterwards passed through Parliament to give effect to certain recommendations of the Ritual Commissioners, but in the House of Commons the preamble was amended, by striking out words which implied that the existing law was altered 'in pursuance of a report made by Convocation.' It being undeniable that Parliament is competent to legislate upon ecclesiastical questions without the assent of Convocation.[q] In June, 1874, this letter of business was renewed, so as to enable Convocation to consider further upon the matters aforesaid. This renewal was necessary because the original letter ceased to be operative after the dissolution of Parliament, in January 1874.[r] The question remained in abeyance until 1879, when Convocation agreed upon a draft Bill to be submitted to Parliament in a future session.

No ordinance or sentence agreed upon in Convocation has any legal validity until it has received the sanction of the crown; and if any attempt be made to enforce the same without such sanction, the parties concerned would incur the penalties of a præmunire.[s]

2. *The position of the Church of England in the Colonies.*

Church of England in the colonies.

The principle of constitutional law which requires that the prerogative of the crown in matters ecclesiastical shall be exercised within the limits prescribed by Parliament, applies with equal force to the erection of episcopal sees in the colonies of the United Kingdom. The Church of England, however, cannot be regarded as an Established Church in any British colony.

In crown colonies, that is to say, colonies which have been acquired by conquest or cession, and which do not possess separate legislative institutions—the legislative power being exercised by the crown, through orders in council—bishoprics may be constituted, and a measure of ecclesiastical jurisdiction conferred, by the sole authority of the crown. This has been done in the

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[p] Com. Pap. 1872, v. 46. p. 39.

[q] Hans. D. v. 211, pp. 889-897, 1088.

[r] *Ib.* v. 220, p. 513.

[s] Hans. D. v. 204, p. 1969. Ld. Chanc. Westbury, in Hans. D. v. 176, p. 1544. Att. Gen. (Sir R. Palmer) *Ib.* v. 180, p. 660.

crown colonies of Ceylon, Sierra Leone, St. Helena, and the Mauritius, and also at Gibraltar. In all these places episcopal sees have been established by the authority of the crown, which had a legal connection with the Church in the mother-country. But even in the case of crown colonies, it should be remarked, that since the repeal of the Act, 1 Eliz. c. 1,[t] which enabled the sovereign to appoint persons who could execute all manner of ecclesiastical jurisdiction in any country belonging to the English crown, there is no power in the crown alone to create any new or additional ecclesiastical tribunal with coercive jurisdiction within the realm.[u] 'It is a settled constitutional principle or rule of law, that although the crown may by its prerogative establish courts to proceed according to the common law, yet that it cannot create any new court to administer any other law; and it is laid down by Lord Coke in the Fourth Institute, that the erection of a new court, with a new jurisdiction, cannot be without an Act of Parliament.'[v] Colonial Church.

The Church of England in a crown colony is prohibited from making any regulation which is at all at variance with the ecclesiastical law of the Church in the mother-country.[w] Moreover, the power of the crown in any such colony must be exercised within the limits prescribed by constitutional law. Notwithstanding the opinion which has been expressed by some eminent authorities,[x] that the position of episcopal sees in the crown colonies is not affected by the judgment of the Privy Council in Bishop Colenso's case, it may be

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[t] By the Act 16 Car. I. c. 11. And see 13 Car. II. c. 12.

[u] Judgmt. of P. Coun. *in re* the Bishop (Colenso) of Natal. Moore's P. C. C., N.S. v. 3, p. 115. *Ib.* v. 1, p. 436. Arguments in case of Long *v.* the Bishop of Cape Town. And see a digest of all cases and opinions on Eccles. Law applicable to the Colonies, in Forsyth, Const. Law, pp. 55-63.

[v] Judgmt. of P. Coun. in Bishop Colenso's case.

[w] Case of the Diocese of Colombo, Com. Pap. 1866, v. 49, p. 228.

[x] Bishop of London, Hans. D. v. 184, p. 511. Ld. Carnarvon (col. secretary), *Ib.* p. 803.

Colonial Church.

assumed that the power of the crown in such colonies is shown by this decision to be limited to the issue of letters patent,[y] sufficient in law to establish personal relations between the bishop and his clergy, as ecclesiastics, and which merely confer powers that can be enforced by mutual agreement; and that no bishop so appointed, under the provisions of his letters patent, possesses any coercive legal authority whatsoever.

The contrary opinion was maintained by Bishop Colenso, in his argument before the Supreme Court of Natal, in September, 1867, in the case of the Bishop *v.* the Dean of Maritzburg. But the judgment of the court, in January following, disallowed the act of the bishop in depriving the dean of his office, though it allowed him to assume control over the Church buildings in the diocese.[z]

Any bishop appointed by the sole authority of the crown to any colonial diocese, unless he has obtained from the Imperial Parliament, or from the local legislature, power to enforce his decrees, must resort to the civil tribunals for that purpose; and they will give or withhold their assistance accordingly, as they are satisfied that he has rightly exercised his episcopal functions in the particular instance.

In the case of new settlements (not being crown colonies) and colonies which have received legislative institutions,[a] it is clear that the crown (subject to the special provisions of any Act of Parliament) stands in the same relation to such a settlement or colony as it does to the United Kingdom; and although it may authorise the consecration of a bishop in and for the benefit of the Church of England in any such colony, and thereby establish 'personal relations' between the

Colonial bishops.

[y] For copies of letters patent heretofore issued, creating colonial bishoprics, with or without metropolitan powers. See Com. Pap. 1866, v. 49, p. 181.

[z] Com. Pap. 1867–8, v. 48, p. 465.

[a] See Act 6 & 7 Vict. c. 13. Certain bishoprics in the East Indies were authorised to be established by the imperial Acts, 53 Geo. III. c. 155, § 49, and 3 & 4 Will. IV. c. 86, § 93. See also 5 & 6 Vict. c. 119, and 34 & 35 Vict. c. 62. The East India bishops are still appointed by the Queen, by letters patent. Com. Pap. 1871, v. 50, p. 739.

said bishop and his clergy, it has no power to assign him any diocese, with diocesan jurisdiction, or coercive legal authority therein, without a special Act being first passed by the imperial or colonial legislature, authorising the issue of letters patent for that purpose.

In 1824 a bishop was appointed in Jamaica by letters patent, but his legal status and authority were defined and established by an Act of the colonial legislature, which was confirmed by the crown. And there are bishoprics in Antigua, Barbados, and Guiana, which have been recognised and confirmed by Acts of the Imperial Parliament, or of the local legislatures.[b]

For 'no metropolitan, or bishop, in any colony having legislative institutions can, by virtue of the crown's letters patent alone (unless granted under an Act of Parliament, or confirmed by a colonial statute), exercise any coercive jurisdiction, or hold any court or tribunal for that purpose. Pastoral or spiritual authority may be incidental to the office of bishop, but all jurisdiction in the Church, where it can be lawfully conferred, must proceed from the crown, and be exercised as the law directs; and suspension or deprivation of office is a matter of coercive legal jurisdiction, and not of mere spiritual authority.'[c]

Case of Bishop Colenso.

Our definition of the legal status of a bishop of the Church of England, in a colony or dependency of the British crown, is taken from a judgment of the Privy Council in March, 1865, in the case of Dr. Colenso, bishop of Natal, who was deprived of his episcopal functions—after a formal trial and condemnation for heretical opinions, before a synod of the Church in South Africa—by his metropolitan, Dr. Gray, the bishop

[b] Papers relating to Church of England in the Colonies. Com. Pap. 1867, v. 48, p. 855.

[c] Privy Coun. Judgt. Bp. of Natal *v.* Bp. of Capetown. Judgment of Master of the Rolls, on Bp. Colenso's salary, Nov. 6, 1866. Jurist Rep. N. S. v. 12, p. 971. For comments on this judgment, see Hans. D. v. 185, pp. 386, 392. *Ib.* v. 186, p. 383. And see Long *v.* the Bp. of Capetown, in Moore's P. C. C., N. S., v. 1., p. 411. And see *Ex parte* C. A. Jenkins, Clerk, and Att.-Gen. of Bermuda, L. T. Rep. N. S., v. 10, p. 583.

Bishop Colenso.

of Capetown. Upon the appeal of Bishop Colenso to the Privy Council, the decision of the metropolitan was set aside, upon the ground of want of the necessary authority and jurisdiction to determine upon the case. In reviewing the legal position of the parties concerned, the Privy Council declared that while the sovereign had undoubted right, by virtue of her prerogative, to give style, title, dignity, and precedence, in all parts of her dominions, yet that she had no power to issue letters patent professing to create episcopal sees, or to confer diocesan jurisdiction, or coercive legal authority, in colonies that were in possession of legislative institutions,—or wherein the Church of England had not been established by law, without express legislative sanction. Representative institutions had been granted to Natal in 1847, and to Capetown in 1850, consequently the letters patent of Drs. Gray and Colenso, which were issued in 1853, without the necessary authorisation, were null and void for any legal purpose whatever.

This vexed question was still further complicated by a decision of the Supreme Court of Natal, in January 1868 (in the case of Bishop Colenso *v.* Mr. Green), to the effect that Natal was a crown colony, at this period, whilst the Privy Council based their judgment on a contrary assumption. The home government afterwards submitted the matter to the law officers of the crown for their opinion.[d]

Effect of the judgment of the Privy Council.

Adverting to this judgment it was stated by the Attorney-General in the House of Commons on March 27, 1865, that the Privy Council thereby determined (1), that no legal dioceses are created by letters patent in the colonies possessing representative institutions, or in which the Church of England had not been previously established by law; (2) that the letters patent heretofore illegally issued for the erection of episcopal sees in

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[d] Hans. D. v. 196, p. 468. On this point see Ld. Blachford's Letter in the London 'Guardian' of Feb. 28, 1883, p. 313: reprinted in his pamphlet on 'The Legal Development of the Colonial Episcopate.'

such colonies do not create any legal identity between the Episcopal Church presided over by these bishops, and the United Church of England and Ireland; (3) that these letters patent do not introduce into those colonies any part of the English ecclesiastical law; (4) that they confer on the bishops no legal jurisdiction or power whatever; and add nothing to any authority which the bishops may be legally capable of acquiring by the voluntary principle, without any letters patent or royal sanction at all. The maximum operation of these letters patent seems to be, to incorporate the bishops and their successors, not as an ecclesiastical corporation in the colony, whose status, rights, and authority the colonies would be required to recognise; but simply as a common legal corporation, which it is in the ordinary prerogative of the crown to create, and for which no statutory powers are required.[e] On May 30, the colonial secretary informed the House of Commons that, upon the advice of the law officers of the crown, the government had decided that, under existing circumstances, no letters patent to bishops ought to be issued to colonies having representative institutions.

Colonial bishops.

The phrase employed in the Privy Council judgment, was 'legislative' institutions, which includes a nominated crown council, such as actually existed at Natal, at the time that Bishop Colenso's patent was issued.[f] Letters patent continue to be issued for the consecration of bishops to sees in the East Indies.[g]

In filling up a then-existing vacancy in the diocese of Rupert's Land, the following course was pursued; a letter was addressed by the Archbishop of Canterbury to the colonial secretary, upon which her Majesty was pleased to issue a mandate to the archbishop authorising him to consecrate a bishop, but no letters patent were issued purporting to convey jurisdiction conferred by the crown.[h]

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[e] The Queen v. Eton College, 8, Ell. and B. p. 635.

[f] Hans. D. v. 185, p. 397.

[g] London Guardian, Dec. 6. 1876, p. 1593.

[h] Hans. D. v. 178, p. 276; v. 179,

It was afterwards decided by the colonial secretary, with the advice of the crown law officers, that 'a mandate from the crown is not necessary to enable colonial bishops to perform the act of consecration.' Case of the bishop of Niagara.[1]

Colonial diocesan synods.

The authority presumed to have been conferred upon a colonial bishop, by his letters patent, 'to perform all the functions appropriate to the office of a bishop in a colony,' did not 'confer power to convene a meeting of clergy and laity, to be elected in a certain manner prescribed by him, for the purpose of making laws binding upon churchmen.' 'Such a meeting,' it was held, was 'not a synod, and its acts are illegal, if they purport, without the consent of the crown or the colonial legislature, to bind persons beyond its control, and to establish new courts of justice.'[j]

Episcopal Church in Canada.

In Canada, so early as the year 1855, application was made to the Imperial Parliament, by a joint address from both Houses of the Canadian legislature, for the repeal of such imperial statutes as impeded the clergy and laity of the colonial church from meeting in synod, and from electing their own bishops; but after consulting the law officers of the crown, the secretary of state for the colonies recommended that the powers sought for should be conferred by an Act of the Canadian legislature, as had already been done in the colony of Victoria. Whereupon the Act 19 & 20 Vict. c. 141 was passed to enable the members of the Church of England in Canada to hold synods, and to elect their own office-bearers. Being reserved for the signification of the royal pleasure thereon, this Bill was disapproved by the crown law officers, who were of opinion that, in order effectually to legalise the election of Canadian

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p. 1100. See the Correspondence, and form of mandate in Corresp. rel. to Colonial Bishoprics, No. 1, 1866, p. 19.

[1] Com. Pap. (Ch. of Eng. in the Colonies) 1867, v. 48, p. 856. Hans. D. v 185, pp. 387-391.

[j] Case of Long v. the Bishop of Capetown, in Brodrick's Judgments of the P. Coun. p. 294.

bishops an imperial statute would be requisite. The Bill, however, was referred to the Judicial Committee of the Privy Council, who, after hearing counsel on the matter, advised that it should receive the royal assent. Whereupon it was specially ratified by the Queen in council.[k] Since the passing of this Act, the crown has deliberately surrendered the right of nominating bishops in Canada, and of approving the choice thereof by the clergy and laity.[l]

New Zealand episcopate.

In view of the altered position of the Church of England in the colonies of Great Britain, by reason of the aforementioned judgment of the Privy Council in the case of the Bishop of Natal,—which denies that the Church is a part of the constitution in any colonial settlement, and repudiates its claim to be recognised by the law of any colony otherwise than as 'the members of a voluntary association,'—the five bishops of the Anglican Church in New Zealand petitioned the Queen, in the year 1865, that they might be permitted to surrender their letters patent (which had been issued by the crown after the colony had received representative institutions), and allowed to rely in future upon the powers inherent in their office for perpetuating the succession of their order within the colony, and securing the due exercise of their episcopal functions, in conformity with a church constitution agreed upon in 1857, 'by voluntary compact' between the bishops, clergy, and laity of the United Church of England and Ireland in New Zealand.

The bishops stated, in their petition, that their church constitution had been recognised by an act of the New Zealand legislature, in 1858, which sanctioned the assembling of a general synod, and made regulations in regard to the holding of church property. That a general synod had since assembled triennially, and had framed rules for enforcing discipline within their body, and had established a tribunal to determine whether such rules had been violated or not, and what should be the effect of their violation; in conformity with the judgment of the Privy Council in the case of Long *v.* the bishop of Capetown, which declared that the members of the Church of England in a colony 'may adopt rules for enforcing discipline within their body which will be binding on those who, expressly or by implication, have assented to them.'[m]

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[k] See Journal Leg. Assy. Can. 1856, pp. 259-266. Com. Pap. 1856, v. 44, p. 129. *Ib.* 1857, § 2, v. 28, p. 97. The Canadian statute was afterwards amended, in order to remove doubts in regard to the representation of the laity in the synods, by the Act 22 Vict. c. 139.

[l] Mac. Mag. v. 18, p. 456.

[m] Brodrick's Judgments, p. 310.

The Church in New Zealand.

In order to prevent any failure of justice, as the result of this new relation between the Church authorities and the parties who may be subject to them, the bishops submit that the course of procedure, in all questions that may arise between any of the members of the Anglican Church in New Zealand,– whether bishops, clergy, or laity,—who have bound themselves by voluntary compact, under the authority of the general synod, should be that which was pointed out by the judgment of Lord Lyndhurst, in 1835, in the case of Dr. Warren,[n] viz.:—

1. That the question be tried and decided according to the rules of the synod, as agreed to by the bishops, clergy, and laity.

2. That on petition of either party the Supreme Court of the colony would have authority to inquire into 'the regularity of the proceedings, and the authority of the tribunal, and, on those grounds merely,' to affirm or annul the decision.

3. That from any such decision of the Supreme Court of the colony an appeal would lie to the Privy Council, upon the same grounds.

The bishops are of opinion that such a mode of procedure would satisfy all the ends of justice, and secure the liberty of the subject, without its being necessary to appeal direct to the crown, in any litigated case, as had been done with such unsatisfactory results in the controversy between the bishop of Capetown and the bishop of Natal.

In order, therefore, that all doubts as to their status, both ecclesiastical and temporal, may be removed, the bishops pray:

1. That the surrender of their letters patent, now declared to be null and void, may be accepted.

2. That the royal mandate under which they were consecrated may be declared to have been merely permissive, and to have no further effect or legal consequence.

3. That the inherent right of the bishops in New Zealand to fill up vacancies in their own order by the consecration of persons elected in conformity with the regulations of the general synod, without letters patent, and without royal mandate, may be recognised: following therein the precedent already established in the case of the missionary-bishop for the islands of the Western Pacific, who was consecrated by the bishops of New Zealand, without letters patent or royal mandate, after communication with the secretary of state for the colonies, and the attorney-general of New Zealand.

On April 24, 1866, the colonial secretary (Mr. Cardwell) informed the House of Commons, in reply to a question from a mem-

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[n] See Brod. and Frem's. Judgments of the Com^e P. C. 308 *n*, 311.

ber, that the foregoing memorial of the New Zealand bishops had been accompanied by a minute from the New Zealand ministry, objecting to the creation of corporations within the colony by the act of the crown without their advice, and also to any arrangement by which any *quasi*-jurisdiction of the bishops in New Zealand should receive any authority from the crown. On the other hand, the archbishop of Canterbury approved of the petition from the New Zealand bishops, but was of opinion that, since the judgments of the Privy Council therein cited, 'the *quasi*-judicial decisions of the governing powers in the colonial churches could only be regarded as proceedings "*in foro domestico*," which ought not to be liable to be reviewed, on appeal, by the Judicial Committee of the Privy Council.'[o] Under these circumstances, and considering the difficulties arising out of the decision of the Privy Council in the case of the bishop of Natal, the government had decided to consult Parliament before any further action was taken. Meanwhile, they were unable to recommend the filling up of a vacancy in the see of Nelson, New Zealand, although such vacancy had existed for several months.

Colonial Bishops Bill.

On May 15, the promised Colonial Bishops Bill was introduced.[p] It permitted the surrender of his letters patent from the crown by any bishop exercising episcopal functions in any of the British colonies. It rendered valid ordinary episcopal acts done by any bishop, lawfully chosen, and consecrated, by the free and voluntary consent of his clergy and people, without the necessity for any letters patent, royal mandate, or license. It authorised any bishop of the Church of England to consecrate, within the United Kingdom, a bishop for the Church in the colonies, or elsewhere beyond the limits of the United Kingdom, upon receiving a royal license in lieu of a mandate for that purpose: and declared that no such mandate or license shall be necessary for any such consecration elsewhere than within the United Kingdom. All questions of law respecting the status, rights, and duties of a colonial bishop to be determinable, where there is no ecclesiastical court, by ordinary courts of law in the colonies. The remaining clauses of this Bill related to the relations between the Established Church in the mother-country and the colonial bishoprics, so far as regards the performance of episcopal acts or clerical functions by persons ordained in the United Kingdom, or in any of its dependencies. Owing to the change of ministry in the latter part of this session, the Colonial Bishoprics Bill was unavoidably withdrawn. But, on

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[o] See the petition, minute of New Zealand Cabinet thereon, and the archbishop's letter, &c., in the 'Correspondence relative to Colonial Bishoprics,' presented to Parliament, in May 1866, No. 1, p. 1.

[p] Hans. D. v. 183, p. 1032.

July 13, the new colonial secretary expressed his general agreement with the principle of this Bill, and intimated that the government would be prepared to submit a similar measure to Parliament in the ensuing session.[q]

3. *The position of the Church of England in Foreign Countries.*

Church of England abroad.

Inasmuch as the whole collective legal powers of a bishop of the Church of England, as distinguished from his spiritual powers, are derived from the crown, in conjunction with Parliament, it follows that no such authority and jurisdiction can be granted out of the Queen's dominions, except as the result of a special arrangement with the governing power of a foreign country; and that the authority of Parliament must be invoked to enable the crown to dispense with the requirements indispensable to the ordinary appointment and consecration of bishops within the realm. Thus, in 1786, after the independence of the revolted American colonies had been established, an act was passed empowering the archbishop of Canterbury or York, with such other bishops as they shall think fit to assist, to consecrate citizens or subjects of foreign states to the episcopal office, according to the form of consecration in the Church of England. This act dispensed with the necessity for the royal license for the election, and of the royal mandate for the confirmation and consecration of such bishops; but it forbad any such consecration without the royal license having been first obtained for the performance of the same.[r] Subsequently, in the year 1841, the provisions of this Act were extended so as to admit of bishops so appointed to exercise spiritual jurisdiction over the ministers of British congregations of the Church of England in foreign countries, as well as over such other Protestant congregations as may be desirous of placing themselves under

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[q] Hans. D. v. 184, p. 805. [r] 26 Geo. III. c. 84.

their authority.[s] In 1862, the bishop of Oxford submitted a Bill to the House of Lords, to authorise the appointment and consecration of bishops for heathen and Mahomedan countries, with a view to the spread of the Gospel among the heathen, and to dispense with the necessity for any license from the crown, to enable the archbishops to proceed to consecrate such bishops. The Bill was opposed by the lord chancellor, as being an attempt to 'assail and remove the supremacy of the crown;' and because it was necessary, in order 'to maintain the constitution of the country in Church and State, that no act should be done by which dignity is conferred, except under special authority emanating from the sovereign, as the source of all authority, temporal and spiritual.' Moreover, there was no necessity for the Bill, as the power and authority required had been already given by the Acts of 26 Geo. III. and 5 Vict. aforesaid; and there was no difficulty in obtaining the license of the crown to proceed under those statutes. The Bill was accordingly withdrawn.[t]

In 1861, the bishops of the Anglican Church in New Zealand, after communication on the subject with the secretary of state for the colonies, and the attorney-general for New Zealand, consecrated a missionary-bishop for the islands of the Western Pacific, without letters patent, or any mandate from the crown, a precedent which has since been followed, without objection.[u]

4. *The obligations of the Act of Uniformity.*

Act of Uniformity.

By the Act 14 Car. II. cap. 4, commonly called the Act of Uniformity, the use of the Book of Common Prayer thereunto annexed is made binding upon the clergy of the Church of England; and they are ex-

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[s] The Jerusalem Bishopric Act, 5 Vict. c. 6, and see the form of license from the crown in Stephen's Eccl. Stat., v. 2, p. 2150, *n.*

[t] Hans. D. v. 168, pp. 223, 234.

[u] *Ib.* v. 185, p. 380.

Act of Uniformity.

pressly forbidden to make use of any other form or order than what is prescribed and appointed to be used in and by the said book. A declaration of assent and consent to the said Book of Common Prayer is required to be made by all officiating ministers of the Church, together with other declarations for the maintenance of the established religion and government in church and state. This Act, however, is limited in its operation to the 'kingdom of England, dominion of Wales, and town of Berwick-on-Tweed.'[v] A similar Act was passed by the Irish Parliament.[w]

In conformity with the general spirit of liberality, and increased freedom of action in regard to ecclesiastical questions, which characterises enlightened public opinion at the present day, it would appear that Parliament is not inclined to insist upon the literal observance of this statute. Thus, on August 7, 1862, inquiry being made of the government, in the House of Commons, whether a certain injunction issued by the bishop of Oxford to his clergy was in conformity with the Act of Uniformity, the attorney-general evaded a direct answer to the question, and inclined to regard the subject matter of the injunction 'as one that concerned the bishop and his clergy, and not the government.'[x]

New terms of clerical subscription.

In 1865, pursuant to the recommendations of a royal commission appointed to consider the terms of subscription to the articles and liturgy of the Established Church by persons admitted to holy orders therein,—which were previously of a very stringent character,—Parliament adopted a new form of subscription, couched in general terms,[y] professedly in order to quiet the conscientious scruples of a large body

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[v] But see the previous Act on the same subject, of 1 Eliz. c. 2, which applies to the whole of 'the Queen's dominions,' and which has not been repealed.

[w] 17 & 18 Car. II. c. 6.

[x] Hans. D. v. 168, p. 1213. But see a valuable note on this point in Smith's Parl. Rememb. 1862, p. 180.

[y] By Act 28 & 29 Vict. c. 122.

of the clergy, and to admit of a greater latitude of opinion, in regard to many questions of faith and practice, concerning which the Church has not pronounced authoritatively, or upon which she does not consider it to be of essential importance that her ministers should be entirely agreed.[z] The Act of Uniformity was amended in 1871, by the Act 34 & 35 Vict. c. 37, which directed the use of a revised Table of Lessons, in lieu of the one previously sanctioned. It was again amended in 1872, by the Act 35 & 36 Vict. c. 35, which authorised the use of certain shortened forms of divine service.

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[z] Hans. D. v. 179, p, 963 (archbishop of York). *Ib.* v. 180, p. 656 (Attorney-General Palmer). See Amos, Fifty Years Eng. Const. pp. 104, 109, for constitutional changes involved in modern legislation upon ecclesiastical questions.

CHAPTER XI.

ROYAL PREROGATIVE CONCERNING THE ARMY AND NAVY.

In relation to the army and navy.

THE next branch of the royal prerogative that will engage our attention is that which concerns the maintenance and control of the army and navy. The existence of a military force, of greater or less extent, for purposes of protection and defence against the enemies of the state is essential to the well-being of every community. But 'the navy is the characteristic and constitutional force of Britain; the army is a new force arising out of the exigencies of modern times.'[a] Parliament has rarely, if ever, objected to increase the navy, or the militia, for internal security, while the augmentation of the army has usually been regarded with jealousy and subjected by the House of Commons to divers constitutional restraints.[b] The Crown has an inherent right to the service of all men to defend the realm; and can lawfully impress seafaring men to man the fleets, and other able-bodied men to defend the coast or shores. But Parliament has very jealously watched the exercise of this prerogative.[c]

All military authority and command within the realm is necessarily centred in the sovereign; a prerogative which, by the declaratory Act 13 Car. II. c. 6, was expressly confirmed.

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[a] Sir A Wellesley (Duke of Wellington), Parl. Deb. v. 11, p. 814.

[b] Clode, Mil. Forces, v. 1, c. 13; v. 2, p. 180.

[c] Stephens, Com. Ed. 1874, v. 3, p. 143, & c. Rpt. of Com^{n} on Manning the Navy, 1859. Mem. on Army (Militia Ballot) Com. Pap. 1875, v. 43, p. 511.

The dependence of the army upon the crown, absolutely and without any qualification, is essential to the safety of the monarchy, and has ever been regarded as the undisputed right of the occupant of the English throne.[d] Nevertheless, at the revolution of 1688, such limitations were imposed upon this prerogative as have rendered it impossible that it should be exercised to the detriment of English liberty. It was declared by the Bill of Rights 'that the raising or keeping a standing army within the kingdom in the time of peace, unless it be with consent of Parliament, is against law.'[e]

Parliamentary consent to the continued existence of a standing army is given only for the period of one year at a time, by a formal resolution of the House of Commons fixing the number of men of which the army shall consist. This resolution is embodied in the preamble of the annual Mutiny Act, which recites the aforesaid provision of the Bill of Rights, and enacts that 'whereas it is adjudged necessary by her Majesty and this present Parliament that a body of forces should be continued for the safety of the United Kingdom, the defence of the possessions of her Majesty's crown, [and the preservation of the balance of power in Europe'[f]]—the said force shall consist of such a number of men. Having declared the assent of Parliament to the existence of an army, to be composed of a limited number of soldiers, the Act proceeds to provide for the discipline of the force by authorising military offenders to be punished according to military law, instead of by the slow and complex process of the civil courts.

In time of war 'the crown has absolute power to legislate for the government of the army,'[g] though, as

[d] See Cox, Inst. Eng. Govt. 594.

[e] Clode, Mil. Forc. v 1, c. 5.

[f] The words between brackets—which were first inserted in 1727, and continued thenceforth until 1868—have been since omitted. Hans. D. v. 191, pp. 326, 557.

[g] See charge of Ch. Just. Cockburn, in the Queen *v.* Nelson and Brand, pp. 69, 87–91. In time of war, the crown acts out of the limits of its dominions as regards the Army, by virtue of its prerogative. Barwis, *v.* Keppel, 2 Wilson, p. 314.

we shall presently notice, that power has fallen into desuetude. In time of peace the crown can only frame laws and regulations for the government of the army and navy by express authority of Parliament. Thus, the articles of war for the discipline and government of the army are made in pursuance of the annual Mutiny Act, the first section whereof authorises the crown to frame those articles. But it is expressly declared that this supplemental legislation shall be legal only so far as it is in accordance with the provisions of the Mutiny Act.[h]

Mutiny Act.

The first Mutiny Act was passed in 1689. It has since been renewed every session, with the exception of the interval between 1698 and 1701, when it was not re-enacted.[i]

In the years immediately following the revolution, the Mutiny Acts dealt exclusively with the matter of discipline, and the parliamentary sanction to the continuance of the army itself was given by resolution of the House of Commons in committee of supply, determining the number of men to be employed, and voting the money required for their maintenance and support. On two occasions during the reign of William III., the House of Commons reduced the number of the standing army by their resolutions in this committee, and one of these instances occurred at the time when there was no Mutiny Act in operation.[j] By modern practice, the numbers of men to be employed both in the army and navy are annually fixed by resolutions in committee of supply, and afterwards included, in respect to the army in the Mutiny Act, and in respect to the navy in the Act of Appropriation; thus obtaining, for the resolutions of the Commons in limitation of the amount of

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[h] Queen v. Nelson and Brand, p. 69. 29 Vict c. 9, s. 1.

[i] Clode, v. 1, pp. 153, 389.

[j] Hallam, v. 3, pp. 189, 190

force to be in the hands of the crown, the consent of the other branches of the legislature.[k]

It is a direct infringement of the constitution, and a violation both of the Bill of Rights and of the Mutiny Act, for the government to raise more men for the land and sea forces than have been voted by Parliament. 'It is the practice of the War Office, however, to regard the number of men voted, not as a maximum number for any time during the year, but for an average upon the whole year; considering that if they made the average correct for the whole year, the vote of the House had been complied with.[l] Upon occasions of great emergency the government have assumed the responsibility of increasing the army or navy beyond the numbers actually voted, and have afterwards applied to Parliament to make good the deficiency in the supplies granted for this service.[m] In 1858, when the government of India was assumed by the British crown, clauses were inserted in the new India Bill to prevent the use of the Indian army out of India, except upon sudden emergency; and requiring that, whenever it should be so made use of, the expense thereof—unless 'both Houses of Parliament' should consent to the contrary—should be defrayed out of moneys to be voted by Parliament, and not out of the Indian revenues.[n] On November 28, 1867, a resolution was submitted to the House of Commons, by the government, to authorise part of the revenues of India to be applied for the ordinary pay of troops chargeable on said revenues, but about to be employed in the expedition against Abyssinia.[o] This resolution was agreed to, and was concurred in by the House of Lords on December 5.

Army Discipline and Regulations Act.

In lieu of the annual Mutiny Act, Parliament passed an Act in 1879 called the Army Discipline and Regulation Act, which embodied various customs and rules which had gradually been adopted. Further regulations

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[k] Clode, Mil. Forces, v. 1, pp. 86, 104. Second Rpt. Courts Martial Comms. Com. Pap., 1868-9, v. 12. p. 408.

[l] Sir G. Lewis, Hans. D. v. 165, p. 974.

[m] *Ib.* v. 164, pp. 1481-1493. But see Smith, Parl. Rememb. 1860, p. 254, and 1862, p. 39. And Rpt. on Pub. Accts. 1862, Com. Pap. v. 11, Evid. 976, and *Ib.* 1864, and 8, Evid. 1009 1029.

[n] 21 & 22 Vict. c. 106, §. 55, 56, Hans. D. v. 151, pp. 1007, 1696, 2008. *Ib.* v. 172, p. 1291. *Ib.* v. 177, p. 1821. Smith's Parl Rememb. 1863. p. 40. Martin's Life P. Consort, v. 4 p. 233, *n.* On the constitutional question of the employment of troops on the Indian establishment in other countries, see the Rep. of Com^e. on Mortality of Troops (China). Com. Pap. v. 15, p. 11. See recommendations of Sel. Com^e. H. of C. in 1868, on employment of native Indian troops in other dependencies of the crown, Com. Pap. 1867-8, v. 6.

[o] Hans. D. v. 190, p. 359.

were afterwards made, and in 1881 another Act was passed in which these were consolidated, whilst the former statute was revised and re-enacted. The Regulation of the Forces Act and the Army Act of 1881 now include all previous laws and regulations on the subject. In 1882 these acts were amended by the Army (Annual) Act, by the Military Manœuvres Act, and by the Reserve Forces Act, all passed in that year. An act to consolidate the law relating to the militia was also passed in 1882.

Standing army.

It is worthy of remark that the declaration of the Bills of Rights, as to the illegality of maintaining a standing army without the consent of Parliament, is expressly confined to 'the time of peace.' Moreover, the Mutiny Act, in conferring extraordinary powers for the discipline of the army, is construed to imply that, except 'in time of peace,' the enforcement of martial law upon military men is not illegal. Accordingly, the royal prerogative, in respect to the embodiment and control of an army and generally for the defence of the realm in times of rebellion or foreign invasion in time of war, remains unimpaired by these constitutional restrictions, and is still the same as it was by the common law.[p] What that law allowed is, however, no longer material to enquire, inasmuch as the monarchs of England, ever since the revolution, have been satisfied to rely upon the authority of the Mutiny Act for the enforcement of discipline in the army both in war and peace, and have been equally dependent at all times upon the necessity of obtaining from Parliament, year by year, the supplies required for the prosecution of any war in which Great Britain might be engaged.[q] During the American war, the question was raised in Parliament whether it was legal to allow

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[p] Clode's Military Forces of the Crown, v. 1, pp. 1-6, 10,

[q] Sat. Rev. Oct. 25, 1862, pp. 505-507.

regiments to be levied and maintained by individuals, without the sanction of Parliament. The weight of authority was against the practice, though ministers inclined to justify it. The principal objection that was urged was a formidable one, namely, that it is of the very essence of Parliament to judge of the necessities of the state, and make provision accordingly; and that any measure to that end, without the previous concurrence of Parliament, tended to supersede its authority and strip it of its rights.[r]

The militia.

It is, however, one of 'the ancient rights and liberties' of Englishmen to 'have arms for their defence, suitable to their condition, and as allowed by law'; and the fundamental laws of the kingdom have repeatedly affirmed the obligation of every Englishman to have a knowledge of the use of arms, in order that he may assist in preserving the public peace.[s] Hence the militia has always been regarded as the constitutional force for the defence of the realm, and one of the earliest Acts of Parliament after the restoration of the monarchy in 1660 was for the settlement of the militia upon a constitutional basis. By the Militia Laws Consolidation Act, passed in 1786, it is declared that 'a respectable military force, under the command of officers possessing landed property within Great Britain, is *essential* to the constitution of this realm.'[t]

Volunteer corps.

Upon a similar principle, the formation of Volunteer rifle corps in Great Britain has taken place under the direct authority of Acts of Parliament, which permit the sovereign to accept offers of military service from the people, under certain conditions.[u] The volunteer

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[r] Parl. Hist., v. 19, p. 625. Campbell's Chanc. v. 5, p. 463.

[s] Smith's Parl. Rememb. 1859, pp. 108-112. Corresp. Will. IV. with Earl Grey. v. 1, p. 416.

[t] Clode, Mil. Forces, v. 1, c. 3 & 4. But this principle has been modified in practice by the Army Regulation Act, 1871. Hans. D. v. 207, p. 1560.

[u] Stats. 44 Geo. III. c. 54; 60 Geo. III. c. 1. Clode, Mil. Forces, v. 1, pp. 86, 333.

Volunteer corps.

movement, which has since assumed such important dimensions, originated in the spring of 1859, when General Peel, the then secretary for war, issued two circulars, the first of which declared the readiness of government to accept the service of volunteer corps, offered under the old Volunteer Act of the 44 George III., and the other set forth the circumstances under which the government was prepared to accept the same.

In 1862, a royal commission was appointed to enquire into the condition of the volunteer force, and to report whether any measures were necessary in order to ensure its stability, and increase its efficiency as an auxiliary arm of national defence. In reporting various recommendations for this purpose, the commissioners lay down the constitutional rule, that 'if it be desirable that any positive limit should be placed upon the total number of the force, the duty and responsibility of deciding that question must rest exclusively with the responsible advisers of the crown.'[v] In conformity with this principle, the secretary of state for war shortly afterwards issued a circular forbidding the enrolment of additional volunteer corps. Though in 1873, an Act was passed to provide for the establishment of a Royal Naval Artillery Volunteer Force, 36 & 37 Vict., c. 77.

Military law.

Military law is a branch of the law of the land applicable only to certain acts of a particular class of persons, and administered by special tribunals. It is based upon rules for the government of the army and navy which have been framed or sanctioned by successive Acts of Parliament. Courts-martial for the trial of military offences are, therefore, a part of the recognised judicatures of the realm, whose jurisdiction is confined to the military and naval forces of the crown.[w]

The Mutiny Act passed in 1877, provided, for the first time—pursuant to the recommendations of a War Office committee in November 1876, on the Militia Acts—that officers of the militia, yeomanry and volunteer corps, should be subjected to the operation of that

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[v] Com. Pap. 1862, v. 27, p. 96.
[w] Forsyth, Const Law, pp. 208, 210.

Act, and of the Articles of War—not only when embodied and out for training, but at other times.[x]

Such being the well-ascertained rights of the crown in regard to the levy, direction, and maintenance of a military force for the protection and defence of the empire, it remains to consider how far the Houses of Parliament are constitutionally competent to interfere therein.

Responsibility of ministers for the control of the army and navy.

We have already seen[y] that the control of the army and navy was the last of the prerogatives to be surrendered into the custody of responsible ministers. Even of late years there have been those who have contended that the administration of the military and naval forces of the kingdom should remain altogether in the hands of the executive; without any interference with the same, by either House of Parliament.[z] But sound doctrine forbids a distinction to be drawn between the exercise of the royal authority over the army and navy, and over other branches of the public service; upon all alike it is equally competent for either House of Parliament to tender its advice, and there can be nothing done in any department of state for which some minister of the crown is not accountable to Parliament. Were an exception to be allowed in the case of the army and navy, it would necessarily follow that the responsibility for their management would fall upon the sovereign directly; but this would be contrary to the constitutional maxim which declares that the king can do no wrong, and is not personally amenable to any earthly tribunal whatsoever.[a] It has also been suggested that the commander-in-chief, and not the advisers of the crown, should be held singly responsible for all acts of military administration. But, as Lord

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[x] Hans, D. v. 232, pp, 1401, 2019, v. 233. p. 817; Act, 26 & 27, Vict. c. 65, §. 21. 40 Vict. c. 7, §. 2.

[y] *Ante*, p. 121.

[z] Hans. D v. 75, p. 1289. Clode, Mil. For. v. 1, p. 84.

[a] See *ante*, p. 263.

Grey pertinently remarks, this would not materially lessen the inconvenience.

Commander of the forces.

'The holder of that office would stand in a most unsafe position, if he could not depend upon the support of the ministers of the crown in case of his measures being questioned in Parliament; and they cannot be expected to give this support unless the officer who trusts to it communicates with them in the performance of his duties, in such a manner as to enable them to guard against his taking, or omitting to take, any step for which they will not be prepared to defend him.'[b] The mismanagement of our forces during the early part of the war with Russia in 1854–5, evinced the necessity for a more direct and undivided responsibility than had previously been recognised in the conduct of interests of such importance to the security of the empire. On the other hand, the advantages accruing from constitutional oversight on the part of the House of Commons, into the manner in which the military departments were organised and controlled, were demonstrated by the vigorous if not altogether successful attempts for the reform of the army administration which resulted from the investigations of Parliament into the conduct of the Crimean war.

The complete responsibility of ministers for the control of the military force having been established beyond dispute, it follows that they must be held accountable to Parliament for their proceedings in this as in other matters.[c] But as the command of the army and navy is the peculiar privilege and strength of the executive power, and cannot be surrendered to Parliament without a virtual overthrow of the monarchy, it is essential that the scrutiny of Parliament into military

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[b] Grey, Parl. Govt. 8–10, *n.* See debate in the H. of C. on military organisation, on June 1, 1858; and observations of Mr. Sidney Herbert and Ld. Palmerston. Hans. D. v. 150. pp. 1349, 1357.

[c] Clode, Mil. Forc. v. 2, p. 69.

affairs should be cautiously and sparingly exercised, lest the constitutional limits of enquiry and counsel should be overstepped, and the functions of executive authority be encroached upon.[d] The constitutional security against an abuse of this prerogative is found in the general responsibility of ministers, and the necessity for the sanction of Parliament to the continued existence of the army and navy, by the annual appropriations for the support of these services, and the annual renewal of the Mutiny Acts.[e]

Parliamentary control over this prerogative.

Parliament has an unquestioned right to interfere, by enquiry, remonstrance, and censure, in all cases of abuse, whether on the part of individual military officers or of executive departments.[f] It has a right to enquire into the causes and consequences of any disasters that may befall our arms in the prosecution of contests against the Queen's enemies.

Select committees to enquire into the miscarriages of the war in Ireland were appointed by both Houses of Parliament in 1689, and the Commons addressed the king for the trial of Colonel Lundy for alleged treason on this occasion.[g] Similar enquiries were instituted by the two Houses of Parliament during the American revolutionary wars and the subsequent naval and military operations in Europe.[h]

It may call ministers to account for placing any officers upon half pay, otherwise than as a reward for past services, and a retainer for future services, if required.[i] It has a right to discuss and advise upon all general questions affecting the well-being of the army and navy, their internal economy or efficiency;

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[d] Clode, Mil. Forc. v. 2, p. 422.

[e] *Ib.* v. 1, p. 190. May, Parl. Practice, 1883, p. 659.

[f] See Hans. D. v. 180, pp. 369 400, on a motion to resolve that the practice of appointing naval officers as dockyard superintendents, and of limiting their term of office to five years, is inexpedient.

[g] Hallam's Const Hist. v. 3, p. 195, ed. 1829.

[h] Hans. D. v. 136, pp. 1811–1816, 1857.

[i] Clode, Mil. Forc. v. 2, p. 98. Hans. D. v. 224, p. 1428.

although great discretion and forbearance are necessary in the exercise of this right.[j]

It is essential to the constitution of a military body that the crown should have the power of appointing, promoting, or reducing to a lower grade, or of altogether dismissing, any of its officers or men[k] from service in the army or navy at its own discretion, and without assigning any reason for the act; such power being always exercised through a responsible minister, who is answerable to Parliament for the same, if it should appear to have been exercised unwarrantably, and upon an insufficient ground.[l]

It was decided by the Court of Queen's Bench, in the case of Dickson *v* Viscount Combermere and others,[m] that the discretionary power of the crown to remove officers of the army or militia is so absolute, that even if an officer had been tried by a court of enquiry and acquitted, the crown was justified in removing him from office upon the advice of a minister responsible to Parliament.[n]

But it would be a dangerous assumption of power for either House of Parliament to interfere in a matter affecting the discipline or command of the army or navy, in any individual instance;[o] or, to institute an enquiry into the causes which affect the promotion of particular officers;[p] or, to revise the decision of the War Office

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[j] Hans. D. v. 89, p. 1069. *Ib.* (Ld. Stanley) v. 167, p. 211. *Ib.* v. 164, p. 625. *Ib.* (Ld. Palmerston), v. 169, p. 751.

[k] As to authority for dismissing private soldiers, see Hans. D. v. 186, p. 732.

[l] Hans. D. (Ld. Hardwicke) v. 170, p. 382. *Ib.* (Ld. Palmerston) v. 180, p. 456. *Ib.* (Gen. Peel) v. 189, p. 1017.

[m] 3. Fost. and Fin. p. 527.

[n] Broom, Const. Law, p. 728. Clode, Mil. Forc. v. 1. p. 108; v. 2, pp. 118–124. And as to dismissal of lords-lieutenant, see *Ib.* v. 1, p. 282. See also discussions in H. of L. and H. of C. Hans. D. v. 170, pp. 381, 1069, on Naval Courts of Enquiry. And see Hans. D. v. 230, p. 1315, on removal of Capt. Sulivan from naval command without a court-martial. See observations in H. of C. on conduct of Board of Admiralty in censuring a naval officer after he had been fully acquitted by a court-martial, *Ib.* v. 167, p. 793.

[o] Mir. of Parl. 1837, p. 861. *Ib.* 1841, p. 835. Hans. D. v. (Ld. Lucan's case) v. 137, p. 1333. Macaulay's speech, *Ib.* v. 84, p. 890. Gen. Peel's speech, *Ib.* v. 174, p. 36.

[p] Mir. of Parl. 1837, p. 574. *Ib.* 1839, p. 2810. Proposed address for retirement of old naval officers with a view to promotion of young and active men. Hans. D. v. 60, p. 483;

or of the Admiralty as to the pay, pension, allowances, or retirement of individual officers;[q] or, into the bestowal of military rewards or punishments to particular persons;[r] or, to review the decisions of courts-martial, and the action of the military or naval authorities in relation thereto;[s] except in cases where either malversation, corrupt motives, or gross violation of the law is distinctly chargeable.

In 1863, the House of Commons were induced, under peculiar circumstances, to require papers to be laid before them touching the court-martial upon Colonel Crawley, for alleged cruelty to Sergeant-Major Lilley; but on March 15, 1864, it was resolved, after a long debate, that the production of any further papers in this case was inexpedient.[t] The legal immunity of commanding officers in the army or navy in bringing their subordinates to trial by court-martial is established by the case of Sutton *v.* Johnstone.[u]

Parliamentary investigation and control.

'There is no precedent, either in the army or navy, for producing [to Parliament] a copy of the report of a Court of Enquiry.[v] Neither should either House of Parliament assume the right of enquiring into the most suitable and efficient weapons for use in the army and

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and see *Ib.* v. 137, p. 1191; v. 164, p. 876; v. 232, p. 1261. But in 1853 a committee of enquiry was appointed by the H of C. into the case of Lieut. Engledue, it being alleged that he owed his restoration to the service to corrupt influences. Com. Pap. 1852-3, v. 25, p. 471. Hans. D. v. 189, p. 333.

[q] Palmerston, Hans. D v. 145, p. 477. Clode, Mil. Forc. v. 1, p. 97. Hans. D. v. 203, p. 116.

[r] Macaulay, in Mir. of Parl. 1841, p. 1687. Wellington, Hans. D. v. 82, p. 720. Clode, Mil. Forc v. 2, pp. 326-330. Case of Capt. King (Army prize money), Parl. D. v. 23, p. 1046. Hans. D. v. 74, p. 58; v. 164, p. 994; v. 167, p. 793.

[s] Mir. Parl. 1831-2, p. 2955. *Ib.* 1834, p. 2121. *Ib.* 1835, p. 2344. *Ib.* 1841, p. 835. Hans. D. v. 171, pp. 974, 1045. And discussions on Lt.-Col. Dawkins' case, *Ib.* v. 179, pp. 642, 879; v. 180, p. 456. L. J. Rep. N.S. v. 34. p. 841. Thomas, Const. Law. p. 69. Hans. D. v. 193, pp. 920, 958. Clode, Mil. Forc. v. 1, pp. 188-190.

[t] As to the injurious effect of the interference of Parliament in this case, see Clode, v. 1, p. 175, *n* Hans. D. v. 189, p. 1020. And see *Ib.* Aug. 6, in regard to the sentence on Capt. Jervis by the court-martial at Simla. Also Com. Pap. 1867, v. 42, pp. 343, 553. And see debate on the Roberts' court-martial, Hans. D. v. 235, p. 923.

[u] 1. Term Rep. p. 493. Broom, Const. Law, p. 650.

[v] Mr. Hunt (1st Ld. Admiralty), Hans. D. v. 232, p. 1976.

navy, unless invited by the government to institute such an investigation.[w]

In 1854, the House of Commons appointed a select committee on the cheapest, most expeditious, and efficient mode of providing small arms for the service; and in 1863 a committee to enquire into the results of recent experiments in various kinds of improved ordnance. These committees were appointed with the sanction of government; nevertheless, the result of their labours was most unsatisfactory. See a debate in the Commons, on March 2, 1865, on a motion for a committee to consider of navy armaments, which was negatived; and on June 13, 1867, on a motion for a committee to consider the present condition of the ordnance department, which, being opposed by ministers, was withdrawn.

It has also been repeatedly held that Parliament has no right to ask for information as to the distribution or movement of troops, whether in times of peace or of war; but such information has been occasionally communicated, and since 1865 has been regularly supplied through the monthly army lists.[x]

And here it may be observed that, prior to the establishment of the railway system, all the highways in the kingdom were assumed to be vested in the sovereign, for the free use of the crown and people. And the sovereign had a prerogative right to the use of these highways, and of carriages and horses in the vicinity, at statutory rates, for the passage of troops or military stores thereon. The actual rights of the crown in the use of railways in peace or on occasions of public emergency are defined in a War Office memorandum on the subject, dated April 1876.[y]

Parliament has a right to call for full information in regard to military matters, for the purpose of enabling it to vote with discretion and intelligence upon the naval and military estimates. But this right must not be held to justify an unseasonable interference in respect to the details of military administration. For example,

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[w] Hans. D. v. 163, pp. 1569–1581.
[x] Clode, Mil. Forc. v. 2, pp. 331 333. [y] Com. Pap. 1877, v. 50, p. 749.

it is an 'invariable rule, founded on the best possible reasons, never to publish instructions sent to naval and military officers, until the operations to which they referred were completed, and not often in that case:'[a] or, to present papers concerning a rebellion or war in which the country is engaged, until peace is restored:[a] or, to make public reports from military officers in the colonies to the military authorities at home, except at the discretion of the government:[b] or, to give information as to the mode in which honours are distributed in the army.[c]

If it be necessary at any time to institute minute enquiries into matters connected with the internal economy of the army or navy, such enquiries, it has been authoritatively stated, 'ought to be made by a commission emanating from the crown and reporting to the crown, which report might afterwards be communicated to the House of Commons for any purposes which the House might require. But I think this House is not the authority which ought properly to institute any enquiries of this kind.'[d] It is perfectly competent, however, for Parliament to address the crown to appoint a commission for such a purpose.[e]

Ministerial explanations on this head.

Occasionally, the administration will avail itself of some formal motion to explain to Parliament the circumstances attending the exercise of the royal prerogative in particular matters connected with naval or military administration.

Thus, on June 7, 1861, on motion for going into committee of

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[a] Ld. Palmerston, Hans. D. v. 172, p. 659.

[a] Hans. D. v. 102, pp. 1185, 1333.

[b] Mir. of Parl. 1837–8, p. 1528. And see *ante*, p. 443.

[c] Mir. of Parl. 1837, p. 603. But verbal explanations may be asked for on such points; see Hans. D. v. 178, p. 1598. *Ib.* v. 179, p. 47.

[d] Ld. Palmerston, Hans. D. v. 137, p. 1241. [And see his speech on promotion and retirement in the navy. *Ib.* v. 169, p. 749.] This opinion was afterwards corroborated by Mr. Disraeli. *Ib.* v. 161, p. 1868; v. 170, p. 875. See a debate on a change in the system of promotion among army medical officers. *Ib.* v. 183, p. 585.

[e] Hans. D. v. 172, p. 794. But see the rules applicable to the appointment of Royal Commissions, *post*, v. 2.

supply, the attention of the House was directed to the recent appointment of an officer to the colonelcy of a regiment, whose claims to such a distinction appeared to have been quite insufficient. The under secretary for war explained the circumstances of the appointment, and justified it. After a few remarks from other members, the subject was dropped.[f] Again, on June 5, 1862, enquiry was made in the House of Commons why a certain officer had been permitted to retire on half-pay, contrary to the Queen's Regulations. It was replied, that it was competent for the crown to dispense with its own rules when an exceptional case occurred, and that in any such case the secretary for war was responsible to Parliament.[g] And see on April 20, 1863, a debate in the House of Lords, on a question put to the first lord of the Admiralty in regard to the proceedings of a naval court of enquiry, which resulted in the censure of Lord Elphinstone, the captain of H.M.S. *Vigilant*, for alleged neglect of duty. On May 19, a similar (informal) discussion took place on the same subject in the House of Commons.

Precedents of enquiries by Parliament.

Having endeavoured to define the rights of the two Houses of Parliament in regard to the exercise of this branch of the royal prerogative, the following precedents are submitted in further illustration of the subject:—

Kempenfeldt expedition.

In 1782, after the failure of the Kempenfeldt expedition, the causes thereof were discussed in both Houses of Parliament. On January 24, on motion of Mr. Fox, a committee of the whole House was appointed, with the concurrence of ministers, 'to enquire into the causes of the want of success of his Majesty's naval forces during this war, and more particularly in the past year.' After this committee had examined various papers laid before them, Mr. Fox, on February 7, moved, 'That it appears to this committee that there was gross mismanagement in the administration of naval affairs in 1781.' This was intended as a direct censure upon the Earl of Sandwich, the first lord of the Admiralty, and was to have been followed up by an address for his removal from office, but the motion was negatived. It was again proposed, in the House itself, on February 20, but was again rejected.[h]

Conduct of the Board of Admiralty.

In 1788, the Board of Admiralty, having, in their discretion, promoted certain captains to the rank of admiral, passing over others whom they adjudged to be disqualified for promotion, the House of Lords was moved, on February 20, to address the king on

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[f] Hans. D. v. 163, p. 764.

[g] *Ib.* v. 167, pp. 409, 429; and see *Ib.* v. 169, pp 1606, 1785.

[h] Parl. Hist. v. 22, pp. 878-946.

behalf of the naval captains who were thus neglected. The motion was opposed by the ministry, on the ground that Parliament ought to 'place a due confidence in the first lord of the Admiralty, and suffer him to exercise the discretion that belonged to his situation, unmolested by their interference. The responsibility lay with that officer and the Board, and there the discretion ought to rest likewise. Whenever a complaint was formally made of breach of trust, or of improper conduct in any responsible member of the administration, the House had a right to institute an enquiry, and, upon sufficient proof of the facts alleged, to address his Majesty to remove the minister so misconducting himself. That was the constitutional power of Parliament, and one of its most important and salutary privileges; but it was widely distinct from that or the other House taking upon themselves to exercise the functions of executive government.'[1] The mover disclaimed any intention of interfering with the prerogative, which he admitted would be 'highly indecent and improper,' but founded his motion on the assumption that the merits of deserving officers 'had been overlooked.' Nevertheless, the motion was negatived without a division. On the following day, Mr. Bastard moved, in the House of Commons, an address to the king to be pleased to confer some mark of royal favour on Captains Balfour and Thompson, two of the officers in question, and who had already received the thanks of the House for gallant conduct. This was resisted by the ministry as an attempt to transfer the patronage of the navy from the crown, by whom it was exercised through responsible ministers, to the Commons, by whom it would be exercised without responsibility or control; 'for who shall call to account the representatives of the people.' Such a usurpation would be destructive to public liberty, and to our free institutions, 'for no axiom is more obvious than that this constitution is dissolved from the instant that executive authority is assumed by the representatives of the people.'[j] The sense of the House being manifestly against the motion, it was withdrawn. On April 18, however, Mr. Bastard renewed it in another shape. He moved for the appointment of a committee to enquire into the conduct of the Admiralty, in the late promotion of admirals. Mr. Pitt, the premier, fully acknowledged the constitutional right of the House to enquire into the conduct of any department of government, with a view either to censure or punishment, 'whenever a case was made out strong enough to warrant suspicion of abuse;' but he denied that sufficient grounds for enquiry had been adduced in the present instance. Mr. Fox expressed his concurrence in this view of the constitutional position of Parliament, and observed that 'no one

Precedents.

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[1] Parl. Hist. v. 27, p. 16.

[j] *Ib.* p. 28.

Precedents.

held more sacred the power of the prerogative, with regard to the distribution of military honours and rewards, than he did; nor was any one more aware that the House of Commons was by no means a proper place for canvassing military promotions. Had this motion been for an address to the crown, he could not have voted for it; but being for enquiry into alleged abuse, in a case in which he saw very strong grounds for suspecting partiality and oppression on the part of the first lord of the Admiralty, he should vote for it. Nevertheless, the question was negatived. Undeterred by his second defeat, Mr. Bastard once more renewed the subject, by moving, on April 29, to resolve 'that it is highly injurious to the naval service of Great Britain to set aside, in promotions of flag officers, officers of distinguished merit and approved service, who are not precluded from such promotion by any orders of his Majesty in council.' The mover declared his object to be to induce the House to lay down a permanent rule for the guidance and protection of naval officers, and to prevent arbitrary and capricious promotions. The motion was characterised as being an uncalled for attempt to fetter the discretion of the Admiralty Board, and an implied censure on the first lord, which had neither been shown to be merited, nor substantiated by evidence. The previous question was put thereon, and negatived.

Walcheren expedition.

Our next precedent refers to an event which is very memorable in English history; namely, the disastrous expedition to Walcheren, in 1809. This expedition had been sent out in order to divert the attention of Napoleon from the reinforcement of his armies on the Danube, which had hitherto proved too powerful for the resistance of Austria, and also for the purpose of attacking the naval armaments and establishments in the Scheldt, which were daily becoming more formidable to the security of Great Britain. The chief command of the expedition was given to Lord Chatham, a cabinet minister. Although partially successful, in the demolition of the docks and arsenals at Flushing, such gain was more than counterbalanced by the unfortunate occupation of the island of Walcheren. This island proved exceedingly unhealthy, and after sustaining severe losses and privations, the troops were obliged to evacuate it, and the remains of this ill-fated expedition were brought back to England. At the ensuing session of Parliament, resolutions of censure upon ministers, for the military operations of the preceding year, were moved, as amendments to the address, in both Houses. It was pertinently remarked, however, that ministers ought not to be condemned without previous enquiry; and these motions were negatived. But, on January 26, 1810, Lord Porchester moved, in the House of Commons, that a committee of the whole House be appointed to enquire into the policy and conduct of the late expedi-

tion to the Scheldt. It was contended, by ministers, that this enquiry should not be instituted until the papers on the subject had been communicated to Parliament. But the House would admit of no delay, and the motion was agreed to by a majority of nine. Soon afterwards, the papers relating to this expedition were laid before Parliament. [The discovery among the documents of a narrative of the expedition, which had been privately submitted by Lord Chatham to the king, led to interesting discussions on the constitutional questions involved in this proceeding; and ultimately to the censure of his lordship, and his consequent resignation of office. But this point has been fully considered in a former chapter, page 267.] The enquiry then proceeded, by the examination of witnesses at the bar. After its termination, Lord Porchester, on March 26, submitted a series of resolutions, setting forth the principal facts adduced in evidence, and declaring ministers responsible for the heavy calamities which had attended the failure of the expedition, and which called for the severest censure of the House upon them. After protracted debates the resolutions were negatived, and counter-resolutions, proposed by General Craufurd, were agreed to, on divisions which gave ministers a majority of from 23 to 51.[k] This result was unexpected, and was attributed, not so much to the exertions of the government in influencing votes, as to the preponderance of their arguments in debate.[l]

Precedents.

Secret societies in the army.

On August 4, 1835, Mr. Hume complained to the House of Commons of the conduct of Field-Marshal H.R.H. the Duke of Cumberland, for having, contrary to the express orders of the commander-in-chief, taken part in promoting the establishment of Orange lodges in the army. Whereupon the House agreed to certain resolutions on the subject, and to an address to the king directing his Majesty's attention thereto. In reply, the king assured the House that he would take the most effectual means to discourage and prevent every attempt to introduce secret societies into the army. The home secretary (Lord John Russell) also informed the House that he had communicated copies of the address and reply to the Duke of Cumberland, and had been assured by his royal highness that he had taken steps to bring about the immediate dissolution of the Orange institution in Great Britain and Ireland.[m]

In 1835, various petitions were presented to Parliament, complaining of illegal and oppressive conduct on the part of General Darling, whilst governor of New South Wales. Among the charges preferred was one on behalf of a Captain Robinson, who had been dismissed from the army on account of the findings of a military court of enquiry, and of a court-martial against him, General

[k] Parl. D. v. 16, p. 422.
[l] Lewis, Administr. p. 322.
[m] Com. Jour. v. 90, pp. 534, 552; Hans. D. v. 70, p. 510.

Precedents.

Darling being held responsible for the manner in which these enquiries were conducted, and for the arbitrary and unjustifiable dismissal of Captain Robinson. On July 30, Mr. Maurice O'Connell moved the House of Commons to appoint a select committee to enquire into the conduct of Governor Darling in the several matters of complaint alleged against him. Sir G. Grey (the colonial secretary) opposed the motion on general grounds, and Mr. Cutlar Fergusson (the judge advocate general) defended the finding of the court-martial. He said that 'before the House could pass so grave a censure on that tribunal, as to refer it to a committee to enquire whether their decision was just or not, they ought to be satisfied, not only that the judgment of the individuals composing it was wrong, but that they had been actuated by corrupt or unworthy motives in coming to their decision.' Nevertheless, on a division, the motion for enquiry was carried against ministers.[n] On August 7, after the nomination of this committee, Lord John Russell moved that it be an instruction to them, 'that they do not include in their enquiry or take cognisance of the proceedings, finding, or sentence of the court-martial held on Captain Robinson.' Admitting that 'there might arise cases requiring the great constitutional superintendence of the House of Commons,' their interference should only take place under 'very grave circumstances,' and the House should then proceed, not by appointing a committee of their own, before which the case should be tried over again, 'but rather by asking for the minutes of the court-martial, and then addressing his Majesty to take further steps, if necessary, in consequence of the injustice, partiality, or illegality of the proceedings of the court-martial.' These arguments prevailed, and, after some further debate, the House agreed to the instruction.[o]

On August 6, 1867, Mr. Brett moved to address her Majesty, that she would be pleased to reconsider the sentence of the court-martial held at Simla, on Captain Jervis, with a view to reinstate that officer in his rank in the army, and in his regiment. This officer, who was aide-de-camp to Sir W. Mansfield, the commander-in-chief in India, had been tried for fraud and insubordination, at the charge of Sir W. Mansfield. Though acquitted of fraud, he had been found guilty of the other offence, but had been recommended to mercy on account of extenuating circumstances. Nevertheless, the Indian commander-in-chief sentenced Captain Jervis to be dismissed the service. This sentence was afterwards confirmed by the commander-in-chief at the Horse Guards, after consultation

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[n] Mir. of Parl. 1835, pp. 2198-2209.

[o] *Ib.* pp. 2344-2348; Sir H. Hardinge's speech, *Ib.* p. 2658; Clode, Mil. Forces, v. i p. 175. The committee afterwards made a report, exculpating Gen. Darling, *Ib.* p. 2875.

with the secretaries of state for war and for India. But a gratuity of 1,800*l.* was tendered to Captain Jervis, which he refused to accept. At first the government declined to lay the proceedings at this court-martial before the House of Commons, on the ground it would be 'very unusual' to do so.[p] But, on July 2, they acceded to a motion for an address for a copy of this paper, without debate. It was accordingly presented to the House.[q] Then followed Mr. Brett's motion, above mentioned. General Peel, who was secretary for war when these transactions took place, strenuously opposed the interference of the House on this occasion. He asserted that the House 'were every day assuming a power which the constitution never intended that they should exercise,' and 'in no case could that be more detrimental than when they interfered with the command and discipline of the army.' Sir John Pakington (secretary for war) resisted the motion, first, because of 'the grave impropriety of making the House of Commons a court of appeal from a grave and serious decision of a military tribunal.' Secondly, because 'full justice had been done in the matter.' After further debate, Mr. Otway moved an amendment that the address should pray her Majesty 'to give effect to the recommendation to mercy contained in the sentence of the court martial held at Simla on Captain Jervis.' Mr. Brett agreed that Mr. Otway's motion should be substituted for his own. Whereupon the House divided, and Mr. Otway's motion was negatived by a majority of eighteen.[r] Mr. Brett afterwards informed the House that he had referred the matter to the commander-in-chief, 'believing that he will do Captain Jervis ample justice.'[s] Precedents.

On August 8, 1870, the first lord of the Admiralty, in reply to a question put to him in the House of Commons, declined to lay before the House papers concerning the trial by court-martial of a sergeant of the marines.[t]

On June 1, 1874, Mr. W. M. Torrens moved in the House of Commons for an address to the Queen, 'that before her royal sanction in time of peace is asked for the permanent removal from active service of any officer under the rank of major-general, who shall have held a commission in the army for three years, Her Majesty may be graciously pleased to direct that an option may be given him of having his case heard, and adjudicated upon by court-martial.' It was opposed by ministers, on the ground that such a rule would be an unnecessary interference with the royal prerogative, and was negatived on division. On June 4, 1875, Mr. Torrens

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[p] Hans. D. v. 188, p. 606, and see p. 770.

[q] Com. Pap. 1867, v. 42, p. 343.

[r] Hans. D. v. 189, pp. 1004-1040.

[s] *Ib.* p. 1100.

[t] *Ib.* v. 203, p. 1696. And see

Precedents.

renewed his motion; but after some debate the House was counted out.

Conduct of commander of the forces.

On May 3, 1836, Sir William Molesworth moved for the appointment of a committee to enquire into the conduct of the commander of the forces, in appointing Lord Brudenell to the lieutenant-colonelcy of the 11th Light Dragoons. His lordship, it seems, had about two years previously been removed from the command of a regiment, on account of his having been censured by a court-martial before which he had appeared as prosecutor. Under these circumstances, it was assumed that his re-appointment to a similar position was improper. In reply, it was shown that the military authorities were of opinion that Lord Brudenell had been sufficiently punished for his past conduct, and that there were no objections to his being reinstated; that there was no cause for imputing misconduct to the commander of the forces, and therefore no parliamentary ground for the proposed enquiry. It was also urged that the re-appointment of this nobleman was simply an act of discipline, not of patronage, and that any interference in such an act by the House of Commons would be unprecedented and unwarrantable. After some further debate the motion was withdrawn.[u]

Crimean expedition.

The disasters which befell the British expeditionary force in the Crimea, at the commencement of the war with Russia, in 1854, were of such magnitude that the state of the army, and the general conduct of the war, engaged the serious attention of Parliament at its next meeting, and animated debates took place in both Houses. On January 26, 1855, Mr. Roebuck moved, in the House of Commons, for the appointment of a committee to enquire into the condition of our army before Sebastopol, and into the conduct of those departments of the government whose duty it had been to minister to the wants of the same. This motion, although of a very stringent character, and involving a censure on the government for their management of the war, was strictly within the limits of constitutional enquiry.[v] Before the debate commenced, Lord John Russell, the president of the council, and leader of the House of Commons, announced his resignation of office, on account of his inability to

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debate on case of Lieut. Tribe, *Ib.* v. 213, p. 382; v. 214, p. 490.

[u] Mir. of Parl. 1836, p. 1306.

[v] See Hans. D. v. 136, pp. 1811–1816, 1857. On June 17, 1864, Sir J. D. Hay moved to resolve that her Majesty's government in landing forces on the Gold Coast for the purpose of waging war against the King of Ashantee, without making any sufficient provision for preserving the health of the troops to be employed there, have incurred a grave responsibility; and that this House laments the want of foresight which has caused so large a loss of life. The government regarded this motion as a vote of censure, and opposed it accordingly. After a long debate, it was negatived by a majority of seven. See also *post*, p. 547.

Precedents.

resist the proposed investigation. He admitted that the inquisitorial power was a most valuable parliamentary privilege, and acknowledged that the motion for enquiry could only be opposed on one of two grounds, either that existing evils were not of sufficient magnitude to call for investigation, or that means had been taken to remedy them. As he could assert neither of these propositions, he had determined to resign his office.[w] After these explanations, the debate began. The motion was opposed by the ministry, on the ground that it went beyond mere enquiry, and was an unconstitutional attempt to take the control of the expedition out of the hands of the government; that to grant the committee would be detrimental to the public interests, and would tend to paralyse the action of the executive, both at home and abroad, at a most critical period.[x] Being thus strenuously opposed by government, the question virtually assumed the shape of non-confidence in the ministry, and when by a large majority the House affirmed the necessity for enquiry, the ministry resigned.[y] They were succeeded by a ministry under the premiership of Lord Palmerston, who had filled the post of home secretary in the previous (Lord Aberdeen's) administration, and who, retaining the objections he had formerly expressed to the proposed committee of enquiry, urged upon the House to abandon it, and to repose confidence in the new executive, who would pledge themselves to introduce such administrative improvements as were necessary for the vigorous prosecution of the war.[z] The House of Commons, however, having agreed to appoint the committee, were unwilling to forego the enquiry; and at length Lord Palmerston reluctantly consented to its being nominated, without any limit to its original scope and purport.[a] The first report of the committee was a recommendation that they should be made a committee of secrecy, but this proposition, not meeting with general acceptance, was disagreed to by the House.[b] After a protracted investigation, the committee made several reports, disclosing grievous mismanagement on the part of the authorities at home and abroad, in the conduct of the war, and making several recommendations for the improvement of the military organisation, &c. On July 17, 1855, Mr. Roebuck moved the following resolution, based upon the information elicited before the committee: 'That this House deeply lamenting the sufferings of our army during the winter campaign in the Crimea, and coinciding with the resolution of their committee, that the conduct of the administration was the first and chief cause of the calamities

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[w] See *ante*, p. 223.

[x] Hans. D. v. 136, pp. 960, 999, 1051, 1202, 1225.

[y] *Ib.* p. 1234.

[z] *Ib.* p. 1424.

[a] *Ib.* p. 1865. Martin, Life of P. C. v. 3, p. 211.

[b] *Ib.* p. 218. Hans. D. v. 136, p. 2088; v. 137, pp. 18–63.

Precedents. Crimean expedition.

which befell that army, do hereby visit with severe reprehension every member of that cabinet whose counsels led to such disastrous results.' The government met this motion by proposing the previous question, contending that the House had not the means of judging correctly of the Crimean expedition; that the result of the enquiry had been inconclusive, and confessedly incomplete, inasmuch as the committee were precluded, from motives of state policy, from more thorough investigations and criticisms, owing to the war having been conducted in concert with our ally, the Emperor of the French; and that the present ministry were not responsible for the original disasters, which occurred before their acceptance of office, and had since been remedied, at least to a very considerable extent. In reply, Mr. Whiteside urged that, according to the doctrine of ministerial responsibility, Lord Palmerston, having been a member of Lord Aberdeen's government, and having, since the recent ministerial changes, consented to the present enquiry, was in fact still responsible for the past transactions; and that he, in common with the other members of the late government who could be shown to have been concerned in such mal-administration (and who were now out of the ministry), ought to suffer the penalty of exclusion from office. This view of the position of Lord Palmerston was denied by Lord John Russell, the attorney-general, Sir G. Grey, and others, who contended that the responsibility for the acts complained of lay with the ministry of Lord Aberdeen, which having been virtually condemned by the House of Commons, had resigned office, and that Lord Palmerston was now the head of an entirely new administration, and could not be held responsible for the conduct of his predecessors. It was admitted by Lord John Russell that, agreeably to the dictum of Macaulay, the member of an existing cabinet who differs from the rest on a vital point is bound to resign: but that 'while he retains his office, he is responsible even for the steps which he has tried to dissuade his colleagues from taking.'[c] Further than this, he was of opinion the doctrine of ministerial responsibility could not be applied, and it certainly did not justify the condemnation of the head of one ministry for the acts of a preceding ministry, because he happened to form part of the same. In this view the House concurred, and after two nights' debate, the motion for the previous question was carried by a large majority.[d] Reviewing the question dispassionately, it is evident that the decision of the House was correct, and that the responsibility of Lord Aberdeen's administration terminated upon their enforced resignation of office. If, as the result of parliamentary investigation, further proceedings against any particular member of that ministry should have appeared to be advisable, they should have taken the shape of a parliamentary im-

[c] Hans. D. v. 139, p. 1080. [d] *Ib.* July 17 and 19, 1855.

peachment, or of a criminatory address to the crown, against the offending individual, and not that of an endeavour to affix a continuance of ministerial responsibility for past acts upon a member of a new administration. Precedents.

On July 24, 1860, Sir John Pakington moved, in the House of Commons, for an address to her Majesty for the appointment of a royal commission to consider the existing system of promotion and retirement in the royal navy; and the pay and position of the several classes of naval officers. The motion was opposed by government on the ground that, admitting grievances to exist, it would be better to trust to the Board of Admiralty, as the responsible department, to effect the necessary improvements, rather than to unsettle the navy by a pointing an irresponsible commission, whose recommendations might excite hopes that could not be realised. The motion was negatived on division. On June 12, previous, Admiral Duncombe had moved for the appointment of a select committee to enquire into the constitution of the Board of Admiralty, and the various duties devolving thereon. Being opposed by government, the motion had been withdrawn, but with the declared intention, on the part of the mover, to renew it in the following session. Accordingly, on March 1, 1861, the motion was again made. Meanwhile, on February 28, a discussion had arisen upon a series of resolutions in favour of a reform in the naval administration, and a reorganisation of the Board of Admiralty, which were proposed by Sir J. Elphinstone, but, after a short debate, were withdrawn. Anxious to conciliate the House upon the question, the government decided to agree to the appointment of a committee on the Board of Admiralty; not because they anticipated that an enquiry would prove any great change in the composition of the Board to be necessary, but because it might 'possibly detect faults,' and 'prove that many misconceptions exist with regard to this great branch of the public service.'[e] They undertook, moreover, to 'give every possible assistance, in order that the enquiry might reach every detail and branch of the Admiralty.'[f] The committee was accordingly appointed. Four days afterwards, Sir J. Elphinstone moved for the appointment of another committee to consider the question of promotion and retirement in the royal navy, and the pay and position of naval officers. This motion was agreed to by a small majority, notwithstanding the opposition of government.[g] But a week afterwards, this order was rescinded, without a division, upon the motion of Lord Palmerston (the premier), the House being 'fully agreed as to the inexpediency' of referring the question of paying the navy to a select committee. So far as concerned the other portion of the enquiry, Lord Palmerston moved

Board of Admiralty.

Promotion and retirement in the navy.

[e] Hans. D. v. 161, pp. 1265, 1267. [f] *Ib.* p. 1248.
[g] *Ib.* pp. 1458-1480.

Precedents.

that it be an instruction to the committee on the Board of Admiralty to consider the present system of promotion and retirement in the royal navy, and to report their opinion thereon: which was agreed to.[h] The committee, however, after examining a number of witnesses, merely reported the evidence, without expressing any opinion upon the matters referred to them.[i] No motion for the reappointment of the committee was made in the following session,[j] a circumstance which has been generally attributed to a growing impression that the administration of naval affairs had become more satisfactory within the last two years, and that no radical errors existed which called for the interference of Parliament.[k] On June 9, 1863, however, the reappointment of the committee was moved for; but being opposed by government, the motion was withdrawn, on an adjourned debate, upon June 24. But on February 24, 1863, Sir John Hay moved for an address to the Queen on the position of officers of the navy in respect to promotion and retirement, declaring the same to be unsatisfactory at present, and setting forth the principles upon which it should be amended. Lord Palmerston opposed the motion, asserting it to be 'not altogether consistent with a proper regard for the legitimate functions of the House;' first, because 'it was a dangerous course for the House to assume to itself administrative functions,' and also because 'it is not expedient for the House to address the crown to make an increase in any department of the public expenditure. It is for the executive government, upon its own responsibility, if it should see fit so to do, to propose to Parliament such additions to that expenditure as they may deem necessary for the public service, and it is for this House to adopt or reject them, as it pleases.' The noble lord, however, contented himself with proposing, as an amendment to the question, a resolution that this House, having on March 13, 1861, instructed a select committee to consider the present system of promotion and retirement in the royal navy, is of opinion that its decision should be suspended until the subject shall have been accordingly considered and reported upon; and that a select committee be appointed to consider the said system, and to report their opinion thereon to this House. Sir John Hay accepted this alternative, and the amendment was agreed to without a division.[l]

On June 11, 1861, a motion was made in the House of Commons for an address to the Queen, to be pleased to take into considera-

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[h] Hans. D. v 161, pp. 1885–1889.

[i] Com. Pap. 1861, v. 5.

[j] Hans. D. v. 165, pp. 626–638, 1263.

[k] *Ib.* p. 630; v. 169, p. 754; v. 171, p. 667. But see v. 169, pp. 663, 769. And see *post*, v. 2, ch. on The Board of Admiralty.

[l] Hans. D. v. 169, pp. 751–784. See a further motion, by Sir L. Palk, on the subject of pay, &c. of naval officers, on June 3, 1864.

tion the position of certain army colonels who had been promoted to that rank for distinguished services during the Crimean war, but whose case had been overlooked in the framing of some new regulations in respect to regimental promotions, 'whereby their prospects in the service had been materially injured.' This motion was agreed to without a division, the government having admitted that the claims of these officers had been unintentionally overlooked, and consented to appoint an official departmental committee to consider the same.[m] This committee reported against the claims of these officers, and the government confirmed their decision. The question was still pressed upon the attention of government by questions and motions in the House of Commons,[n] and on April 28, 1863, a motion for an address to the crown to issue a royal commission for the further investigation of the matter was proposed. Lord Palmerston deprecated the interference of the House with the detailed management of the army, because that is no part of the constitutional functions of the House of Commons, 'and was calculated to lead to very objectionable results;' but he promised, if the motion were withdrawn, that a commission should be issued. Mr. Disraeli defended the motion as strictly regular, and as being no infringement of 'the constitutional practice, entirely recognised, that it is not the business of Parliament to interfere with the government of the army,' inasmuch as the proposed proceeding was by an address to the crown. The motion, however, was withdrawn, in faith of the promise made by the premier.[o] But in 1869 and 1870, the attention of the House of Commons was called, by a private member, to certain hardships inflicted on colonels of the British army in consequence of their supersession by colonels of the Indian army, and on June 29, 1870, ministers consented to the appointment of a select committee to enquire into the matter.[p]

Precedents.

Regimental promotions.

On May 15, 1863, a motion for papers relating to the condition of regimental quartermasters, 'though to a certain extent connected with the discipline of the army,' was admitted to be very proper for the consideration of the House of Commons, 'involving as it did essentially a financial question.'[q] On June 21, 1864, an address was agreed to by the House of Commons (with the consent of the government) for an enquiry into the condition, pay, and allowances, of regimental quartermasters.

Quartermasters

On March 3, 1864, a resolution was proposed in the House of Commons to declare that the discontinuance of the assembling of the yeomanry cavalry for the customary training, during the present year, was inexpedient, and would be detrimental to the efficiency of

Yeomanry cavalry.

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[m] Hans D. v. 163, pp. 938 944.
[n] *Ib.* v. 169, pp. 262, 1947.
[o] *Ib.* v. 170, pp. 873-876.
[p] *Ib.* v. 197, p. 1888; v. 200, p. 1168.
[q] *Ib.* v. 170, p 1779.

Precedents.

the force. The assistant secretary for war declared that the government had been obliged to take this step, in order to reduce the army estimates; but that they did not consider it would have the effect of materially diminishing the efficiency of the force. Upon division, the motion was negatived by a majority of one.[r] But the government, having been enabled to effect an unexpected saving upon the estimate for the cost of prosecuting the war in New Zealand, afterwards submitted to the House a vote for the training of the yeomanry, which was agreed to by a large majority.[s]

Indian army officers.

On May 2, 1865, a member called the attention of the House of Commons to petitions from certain officers of the late East India Company's army, complaining of a breach of faith on the part of the government, in the reduction of that force, and its amalgamation with the army of the Queen. The case of these officers had been already discussed in Parliament; upon a motion for a committee of enquiry, the government had agreed to appoint a royal commission, who had reported upon the alleged grievances. The government had undertaken to redress such grievances as might be substantiated before the commissioners. Nevertheless, it appeared that the result of their decision upon the several matters of complaint was regarded by many as being partial and inadequate. Accordingly, an address to the crown—praying for the redress of all the grievances admitted to exist by the commissioners, which had arisen by a departure from the assurances contained in certain Acts of Parliament—was proposed and carried (against ministers); the secretary of state for India contending that, as a whole, the condition of the officers of the Indian army had been considerably benefited by the action of government. On May 9, an answer was received to the aforesaid address, stating that directions should be given for further enquiry into this matter, in order that 'ample redress' should be afforded wherever it might appear to be necessary. On May 15, the case of the officers of the late Indian army was fully debated in the House of Lords, upon the presentation of a petition from an officer in a Bombay regiment. It was then stated by the secretary of state for war that, in deference to the opinion of the House of Commons, it was the intention of the government to appoint a new commission to investigate whether the grievances pointed out by the first commission had, or had not, been removed.[t] On June 29, the House of Commons was informed that the new commission had been appointed, and had commenced their labours.[u] Their report, dated September 14, 1865, was laid before Parliament in the following session. On August 6,

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[r] Hans. D. v. 173, pp. 1376–1388.

[s] *Ib.* v. 175, p. 45.

[t] *Ib.* v. 179, p. 286. On the same day the House of Commons was informed of the intention to appoint this commission. *Ib.* p. 297.

[u] *Ib.* v. 180, p. 926.

1866, Lord Cranborne, the secretary of state for India, informed the House of the conclusions arrived at by the new Derby administration, for the remedy of the grievances under which the officers of the local army of India had so long laboured. These conclusions were afterwards embodied in two despatches from the secretary of state to the government of India, dated August 8, 1866.[v] But on June 28, 1870, the House of Commons again addressed the crown in respect to these grievances, and at the same time a committee was appointed by the House to consider counter-complaints of hardships urged on behalf of colonels of the British army, owing to their supersession by Indian army colonels. This committee reported in July.[w] On February 8, 1875, another select committee was appointed by the House of Commons on this subject, which reported on March 23.[x]

Precedents.

On March 20, 1866, with the consent of the government, a select committee was appointed by the House of Commons 'to enquire into the mortality of the troops in China, the causes which led to it, and into the conduct of those departments of the government whose duty it has been to administer to the wants of those troops.' This was no party question, but arose out of certain unfortunate occurrences, in regard to which the under-secretary for war stated that the government, whilst they were willing to take the responsibility upon themselves, considered it more advisable that the subject should be investigated by a committee.[y] This committee reported, on July 24, the evidence they had taken on this subject, together with their opinion upon the facts before them. The main conclusion at which they arrived was to the effect that, during the summer of 1865, the troops stationed in China were overcrowded in barracks, and had very defective hospital accommodations, which occasioned much sickness and loss of life. They acquitted the War Department of blame in regard to these unfortunate occurrences, but recorded their belief that fuller instructions explanatory of the views of the imperial authorities respecting the needful arrangements for the proper care of the troops, 'so far from limiting the discretion of the general officer in command, would have enlightened and strengthened him in its exercise.'[z]

Mortality of troops in China.

On February 14, 1867, explanations were given to the House of Commons of the circumstances attending a certain naval promotion, whilst the reasons for the same were withheld, lest 'it might create misunderstanding.'[a] Dissatisfied with these explanations, a member moved, on March 21, that 'the promotion by the first lord of the

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[v] Com. Pap. 1866, v. 52, p. 157.

[w] Hans. D. v. 202, p. 1147; v. 210, p. 969. Com. Pap. 1870, v. 5, p. 739.

[x] Com. Pap. 1875, v. 10, p. 247.

[y] Hans. D. v. 182, p. 647.

[z] Com. Pap. 1866, v. 15, p. 1.

[a] Hans. D. v. 185, p. 34[illegible].

Precedents.

Admiralty of a junior lieutenant in the navy, without any special or distinguished service, over the heads of hundreds of meritorious lieutenants senior to him in the service, is prejudicial to the public interest.' Ministers opposed the motion on the ground that, while as a general rule promotions were 'by selection, based on seniority,' a discretion had been usually exercised by first lords, in particular cases, which was not inconsistent 'with the interests of the naval service.' Several such cases having been referred to in the debate, the motion was withdrawn until the House should be in possession of further information on the subject.[b] The subject was not again resumed.

On July 16, 1868, a select committee was appointed by the House of Commons to enquire into certain allegations of complaint against the royal gun factories.[c]

On July 6, 1877, ministers successfully resisted an attempt to refer to a select committee the question of the best mode of constructing war vessels, on the ground that it would be an undue interference with the responsibility of the Admiralty in such matters.[d]

Martial law.

Since the publication of the first edition of this volume the popular and hitherto generally accepted definition of martial law has been brought to the test of judicial determination, and has been utterly repudiated and disallowed.

Sir Alexander Cockburn, lord chief justice of the Court of Queen's Bench, in his charge to the grand jury at the Central Criminal Court in the case of Regina *v.* Nelson and Brand,[e] establishes the important fact that martial law, as popularly understood, is unknown to the law of England. This charge, though not law, defines what in the opinion of the learned judge is the state of the law. The crown itself, he asserts, has no prerogative to proclaim a state of martial law, which shall place the civil courts in abeyance, and subject all persons within the district immediately concerned to the jurisdiction of the military power.

The army is governed by a military law, applicable

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[b] Hans. D. v. 186, pp. 293–311. Return presented, Com. Pap. 1867, v. 44, p. 559.

[c] Hans. D. v. 193, pp. 1254–1261.

[d] *Ib.* v. 235, p. 909.

[e] Published and edited by Mr. F. Cockburn, London, 1867.

only to soldiers, but which is definite, precise, and legal, having been framed by experienced military authorities, and ratified by the sanction of Parliament.[f]

Martial law is a very different thing. It is the assumption of arbitrary power over all persons in any district wherein martial law has been proclaimed, for the purpose of quelling an armed insurrection against the constituted authorities. And it is conclusively shown, in this luminous and elaborate charge, that the crown, in its constitutional capacity, has no inherent prerogative to proclaim martial law, as applicable to the inhabitants of the country generally, or to any particular district thereof, under any circumstances or conditions whatsoever, and that martial law cannot be enforced within the realm of England except by authority of Parliament.

In case of riot or insurrection the magistrates are authorised, by the Riot Act, to call in the aid of the military power to act in aid of and under the civil power, for the suppression of the same.

The legality of the employment of troops, under the authority of the civil magistrate, and upon the responsibility of the secretary of state for the Home Department, has been sometimes impugned, as being equivalent to the introduction of martial law and military government. But this doctrine has found no favour with the best constitutional authorities, and it is quite inapplicable to an army which, like that of Great Britain, owes its very existence to Parliament, and is directly subordinated to the control of the civil power. It has been held, moreover, that, in cases of emergency, the executive government may issue a proclamation empowering the military authorities to act for the suppression of riots, without waiting for directions from a civil magistrate.[g] The extent to which it is allowable to employ volunteers for suppression of riots is regulated by circulars from the War Office. These circulars were at first

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[f] See *ante*, p. 521.

[g] Parl. Hist. v. 9, p. 1294. Queen's Regs. and Orders for Army, ed. 1883, p. 222. Prendergast, Law of Army, p. 13. Finlason, Martial Law, pp. v. 26. May, Const. Hist. v. 2, p. 127. Forsyth, Const. Law, p. 214. The whole question is discussed, and the authorities reviewed in Clode's Mil. Forc. v. 2, ch. 17, and Stephen's Hist. Crim. Law, v. 1, pp. 207-216; see also Hans. D. v. 212, pp. 3, 285.

severely criticised in both Houses of Parliament, and were afterwards re-issued with more explicit directions.[h]

If a rebellion or invasion occurs, the crown has a common-law right and is imperatively required to put it down by military force. But all prisoners who are taken at such times must be tried before the ordinary tribunals; unless Parliament has interposed, at this particular juncture, by passing a law authorising a summary mode of procedure against persons implicated in these grave offences.

The chief justice (Cockburn) admits that 'where illegal force is resorted to for the purpose of crime, you may meet that illegal force by force, and may repress and prevent it by any amount of force that may be necessary for the purpose;' as, for example, 'if a mutiny breaks out on board ship, immediate force may be resorted to; you may quell the mutiny if necessary by killing those engaged in it.' 'But this is not what can properly be called martial law.' It is 'the law of necessity,' which 'is part and parcel of the law of England.' The question really is, 'whether for the suppression of a rebellion, you may subject persons not actively engaged in it, and whom you therefore cannot kill on the spot, to an anomalous and exceptional law, and try them for their lives without the safeguards which the law ought to afford.'[i] To say that 'the necessity of suppressing rebellion is what justifies the exercise of martial law'—in the sense of an arbitrary, illegal, and irregular interposition of authority—is a 'fearful and odious doctrine. There are considerations more important even than the shortening the temporary duration of an insurrection. Among them are the eternal and immutable principles of justice, principles which

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[h] Com. Pap. 1867, v. 41, pp. 819–821. Hans. D. v. 185, pp. 371, 919, 1551; v. 186, pp. 457, 728, v. 187, p. 1936; v. 188, pp. 744, 751.

[i] Cockburn's Nelson *v.* Brand, pp. 85, 86.

can never be violated without lasting detriment to the true interests and well-being of a civilised community.'[j]

The weighty arguments contained in this charge[k] induced the grand jury in a presentment in this case to express a hope that martial law, as it is called, might be more clearly defined by legislative enactment.[l]

But the *Law Magazine* for August, 1867 (pp. 222-239), in an able article epitomising the charge of the chief justice, questions the wisdom and expediency of any further legislation on the subject, and is of opinion that the principles of constitutional law which have been so accurately set forth in this memorable charge will hereafter suffice to meet any future contingencies of the kind that may hereafter arise. This opinion has been virtually accepted by the House of Commons, in a debate on July 2, 1867, upon a motion to resolve that the crown had no power to suspend the law or to proclaim so-called 'martial law' without the assistance of Parliament. The sense of the House was against the motion; and it was truly remarked that 'the House in passing such a resolution would be doing something beyond its functions, and to which no court of law would pay the least attention.' If the proclamation of martial law 'were legal, what power had the House, being only one part of the legislature, to make it illegal? If it were illegal, what advantage would there be in the resolution?'[m] The motion was accordingly withdrawn.

On May 6, 1867, enquiry was made of ministers whether they proposed in any manner to act upon this recommendation. It was replied that, previous to the aforesaid presentment, the secretary of state for the colonies had directed a circular to colonial governors, which expresses the views of her Majesty's government on the subject of martial law.[n]

By this circular, which is dated January 30, 1867, an extract is communicated of a despatch addressed to the Governor of Antigua, in reference to an act in that colony, 'which purports to invest the executive government with a permanent power of suspending the

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[j] Cockburn's Nelson *v.* Brand, p. 108.

[k] *Ib.* pp. 85, 86, 108.

[l] L. T. v. 42, p. 474.

[m] Hans. D. v. 188, p. 915.

[n] *Ib.* v. 187, p. 3.

ordinary law of the colony, of removing the known safeguards of life and property, and of legalising *in advance* such measures as may be deemed conducive to the establishment of order by the military officer charged with the suppression of disturbances,' and which is declared to be 'entirely at variance with the spirit of English law.' Instructions are given to cause to be submitted to the legislature an act for the repeal of this law, because 'in no colony' should the power given by the said law 'be suffered to continue.'

The circular adds that, in giving these instructions, 'her Majesty's government must not be supposed to convey an absolute prohibition of all recourse to martial law, under the stress of great emergencies, and in anticipation of an act of indemnity. The justification, however, of such a step must rest on the pressure of the moment, and the governor cannot by any instructions be relieved from the obligation of deciding for himself, under that pressure, whether the responsibility of proclaiming martial law is or is not greater than that of refraining from doing so.'[o]

This despatch has probably led to the repeal of all colonial acts under which a standing power is conferred upon the governor to proclaim martial law. Such acts were in existence in Antigua and Bermuda, and presumably in Jamaica also.[p] This will materially diminish the opportunities for the abuse of this power in the event of sudden outbreaks, and necessitate an immediate recourse to the local legislature, either for the purpose of obtaining authority to proclaim martial law, or for indemnity for acts done in anticipation of such authority. Moreover, in addition to the above-mentioned despatch, confidential instructions[q] have been

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[o] Circular despatch to colonial governors, Com. Pap. 1867, v. 49, p. 395. Queen *v.* Nelson and Brand, p. 74, *n.* Mr. Justice Blackburn's charge in the case of Gov. Eyre, in June 1868.

[p] Hans. D. v. 188, p. 904.

[q] *Ib.* v. 188, p. 1724.

sent out by the Colonial Office to colonial governors for their guidance in case of insurrection or emergency beyond the reach of ordinary law. But it is thought that it will be necessary to have some further legislation on the subject, in the way of giving larger powers of arrest in cases of necessity.[r]

Forsyth, in his 'Cases and Opinions on Constitutional Law,' after reviewing the confused and conflicting opinions that have been expressed on the subject,[s] says: 'The right conclusion of the whole matter seems to be this: martial law may be justifiably imposed as a terrible necessity, and an act of self-defence; under it there is a suspension of civil rights, and the ordinary forms of trial are in abeyance. Under it a man in actual armed resistance may be put to death on the spot by anyone acting under the orders of competent authority; or, if arrested, may be tried in any manner which such authority shall direct. But if there be an abuse of the power so given, and acts are done under it, not *bonâ fide* to suppress rebellion, and in self-defence, but to gratify malice, or in the caprice of tyranny, then for such acts the party doing them is responsible.'[t]

Ministers responsible for the same.

All ministers of the crown, through whose instrumentality resort should be had under any circumstances to martial law, are responsible to Parliament for their conduct, and must be able to justify the necessity for their acts under penalty of censure, removal from office, or impeachment, if it should prove upon investigation that their proceedings had been uncalled for or unwarrantably severe.[u]

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[r] Hans. D. p. 268. For precedents of the proclamation of martial law in the colonies from 1805 to 1863, see Clode, Mil Forc. v. 2, p. 481.

[s] Pp. 188–214.

[t] *Ib.* p. 214. See Clode, Mil. Forc. v. 2, ch. 18.

[u] Hans. D. v. 184, pp. 1803, 1893. For arguments on constitutional restrictions upon the crown in proclaiming martial law, see Law. Mag. v. 12, p. 170, on Martial Law in Australia; and articles on Jamaica case, in The Jurist, for Jan. 6, April 7, June 30, July 21 and 28, 1866. And see the evidence given by the Attoy.-Gen. for Jamaica. Com. Pap. 1866, v. 31, p. 331.

Jamaica case.

In 1865, a royal commission was appointed to enquire into the circumstances under which martial law was proclaimed by Governor Eyre upon the breaking out of an insurrection in the island of Jamaica. In consequence of the report of this commission, Governor Eyre, who had previously been suspended, was removed from office, on account of his having sanctioned an excessive and unjustifiable severity in the suppression of the insurrection; although, at the same time, praise was awarded to him for the skill, promptitude, and vigour he had manifested during its early stages. This report was laid before Parliament; and met with general approval.[v]

Ministers afterwards assured the House of Commons that enquiry, with a view to punishment, should be made into any grave excesses of severity, by any officers, civil, naval, or military, who were engaged in suppressing this insurrection. They agreed at the same time to a resolution 'that this House deplores the excessive punishments which followed the suppression' of the said disturbances, 'especially the unnecessary frequency with which the punishment of death was inflicted.'[w] The steps taken by ministers in fulfilment of the foregoing pledge were explained to the House early in the ensuing session.[x] Her Majesty, by the advice of successive ministers, declined to confer on Mr. Eyre the Order of the Bath, and he was refused another appointment.[y] But he was allowed the usual pension for past service.[z]

Royal Prerogative of Mercy.

Prerogative of mercy.

We have next to consider the prerogative of mercy, which is a peculiar attribute of royalty, and is vested, by statute, in the sovereign of England.[a] All criminal offences are either against the Queen's peace or against her crown and dignity. She is, therefore, the proper person to prosecute for all public offences and breaches of the peace. Hence her prerogative of pardon, whereby she is empowered to remit or mitigate the sentence against a criminal or criminals, who have been guilty of treason or other felonies; for it is reasonable that that person only who is injured should have the

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[v] Rpt. of Jamaica Com^{n}, Com. Pap. 1866, v. 30, 31; Hans. D. v. 184, p 1763; v. 189, p. 1437.

[w] Hans. D. v. 184, pp. 1794, 1839.

[x] *Ib.* v. 186, p. 275.

[y] *Ib.* v. 212, p. 827. Com. Pap. 1872, v. 43.

[z] Hans. D. v. 225, p. 813.

[a] 27 Henry VIII. c. 24, 7 & 8 Geo. IV. c. 28, § 13. See Holt, King v. Parsons. 1 Shower's Rep. p. 283.

power of forgiving. But this, like every other prerogative of the British crown, is held in trust for the welfare of the people, and is exercised only upon the advice of responsible ministers.[b] It is, moreover, subject to the control of Parliament, which has more than once interfered by statute to limit and restrain the effects of a royal pardon.[c]

Inasmuch as the corruption of blood, and the consequent disability of the heirs of an attainted person to inherit property, which results from an attainder, can only be removed by Parliament, it has been sometimes necessary for the sovereign to invoke the assistance of Parliament to give effect to the royal clemency towards political offenders, or their descendants; or to sanction the introduction of particular Bills into either House for that purpose.[d] But a general act of grace and pardon for political offences originates with the sovereign, by whom it is first transmitted to the House of Lords. It is received with peculiar marks of respect by the Houses of Parliament. It is only read once by each House, and cannot be amended, but must be either rejected or accepted altogether.[e]

A Bill of indemnity, or of general pardon and oblivion for political offences, may by invitation of the crown be initiated in either House of Parliament, proceeded upon as an ordinary Bill, and afterwards submitted for the royal sanction.[f] The sanction of Parliament is necessary to remove the effects of attainders; otherwise it is customary since the establishment of parliamentary government for Parliament to refrain from direct interference with this prerogative.[g]

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[b] Martin, Life P. Consort, v. 1, p. 141.

[c] Petersdorff, Abridg[t]. ed. 1864, v. 6, p. 43. Macknight's Life of Lord Bolingbroke, pp. 517, 558.

[d] Com. Jour. v. 23, p. 56.

[e] *Ib.* 17 June, 1747. See Canada Stat. 12 Vict. c. 13.

[f] Macaulay, Hist. of Eng. v. 3. pp. 308, 575. Parl. Deb. v. 40, pp. 1423, 1536; *Ib.* N.S. v. 11. pp. 815, 1318.

[g] Stephen, Com. Ed. 1868, v. 4, p. 570. Rept. of precdts. in Lords' Jour. v. 56, pp. 286, 425. See *post*, p. 566.

Is confined to criminal offences.

The exercise of the prerogative of pardon is strictly confined to criminal offences, wherein the crown is a prosecutor, and does not extend to cases of private wrong.[h] Hence Parliament has no right to address the crown for the release of a prisoner confined in gaol on a civil suit, or for non-payment of damages, or for contempt of court, as it is beyond the power of the crown to discharge such persons. Any such application by Parliament would be invoking the exercise of an unconstitutional and arbitrary power, in violation of law and order.[i] Undue severity in such cases, if not capable of being redressed by the ordinary legal tribunals, can only be remedied by a special Act of Parliament.[j]

Royal pardons.

Formerly all royal pardons were granted under the great seal, upon the advice of the Privy Council. In compliance, generally, with the recommendation of the judge who presided at the trial, the Privy Council assembled to deliberate upon the case. Occasionally discussions arose on the question whether the crown should be advised to remit the sentence or not, in which the king himself took part. But since the commencement of the present reign, this practice has fallen into desuetude, and the administration of the prerogative of mercy has devolved upon the secretary of state for the Home Department, who is considered as being directly and exclusively responsible for the same in Great Britain; and the Lord Lieutenant in Ireland.[k]

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[h] Bowyer, Const. Law, p. 172. Cox, Inst. 615, *n.*

[i] Case of J. Thorogood, Mir. Parl. 1840, pp. 4898, 4901, 4935, 5008. Broom, Leg. Max. 4th ed. p. 65. Hans. D. v. 189, p. 1560; v. 194, p. 768; v. 223, p. 102.

[j] May, Const. Hist. v. 2, pp. 275–278. As to the right of the crown to remit penalties and forfeitures imposed by law, and recoverable by parties other than the crown; *i.e.* in suits by action of debt, as well as in criminal proceedings, see L. T. v. 59, p. 94; Hans. D. v. 224, p. 1131; v. 226, pp. 598, 691; 22 Vict. c. 32, 38, and 39 Vict. c. 80; and Art Unions Acts, 9 & 10 Vict. c. 48. In Canada the Gov.-Gen[l]. can exercise this prerogative, pursuant to the terms of his commission. Can. Sess. Pap. 1869, No. 16.

[k] Hans. D. v. 174, p. 1483. *Ib.* v. 175, p. 252. Mr. Gladstone's letter to T. Sexton, M.P., of Sept. 6, 1882. See an article in the West. Rev. v. 25, p. 398, on the Prerogative of Pardon. See a disquisition on Executive Par-

The agreement of the Privy Council having become unnecessary, this body is no longer consulted; but the practice is now regulated by the Act 6 Geo. IV. c. 25, under which pardons, whether free or conditional, may be granted by a warrant under the sign-manual, countersigned by a secretary of state, without the necessity for a more formal instrument.[l] Thus the Home Office, which was originally employed as a medium of enquiry, for the information of the sovereign, has gradually developed into a court of review in criminal cases, whenever a formal application is made for the remission of a sentence. But the office acts rather as a court of mercy than as a court of appeal, because the cases wherein the secretary of state sits as a court of review to re-try the prisoner, and to set aside verdicts, are exceedingly rare. For the most part the facts of the trial are not re-opened, there being seldom any doubt of the correctness of the verdict. The question generally is, whether it is a fit case for the interposition of the prerogative of mercy as a matter of grace. This is a question that no mere legal tribunal could decide, and it is one that suitably belongs to the crown, acting upon the advice of a responsible minister to determine.[m]

Exercise of this perogative.

In the exercise of this prerogative, the secretary of state is called upon to pay regard to the moral aspect of the case, as contrasted with the legal; and he is also obliged to consider, to some extent, the popular feeling in the community at large.[n] The royal prerogative may be exercised more than once in reference to the same case; thus, where a person has been sentenced to death for a capital crime, and the punishment has been com-

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dons in Rpt. of Massachusetts Board of State Charities, Jan. 1871, pp. 46-79. Stephen, Hist. Crim. Law of Eng. 1883, v. 1, c. 10.

[l] Parl. D. N. S. v. 12, p. 1163.

[m] Evid. of Sir G. Grey, Home Secretary, and of Mr. Walpole, ex-H. Secy., before Comn on Capital Punish't. Com. Pap. 1866, v. 21; Hans. D. v. 196, p. 1616.

[n] Lord Chancellor and others on Hall's case, Hans. D. v. 174, pp. 862-866.

muted to one of penal servitude for life, the prerogative may be subsequently interposed for the mitigation of the sentence. But this is only done in cases of an exceptional character.[o] And the crown can only deal with the whole punishment; it has no power to remit a portion of the sentence merely.[p] But the crown may extend its mercy on what terms it pleases, and consequently may annex to its pardon any condition that it thinks fit, whether precedent or subsequent, on the performance whereof the validity of the pardon will depend. But the consent of the felon must be given to a change of punishment; for the crown cannot compel a man, against his will, to submit to a different punishment from that which has been awarded against him in due course of law.[q]

In 1849, after W. Smith O'Brien, and others concerned in the rising in Ireland, in 1848, had been convicted of high treason, the Queen was pleased to commute their sentence to transportation for life. But the prisoners refused this act of mercy, and insisted that their own assent was required to the commutation of the sentence. They based their claim, not upon general principles, but upon the wording of certain statutes affecting Ireland. The law officers of the crown protested against this argument; nevertheless, the government introduced a Bill into Parliament to remove all doubts upon the point, which became law.[r]

Whenever the crown is memorialised, through the home secretary, for the remission of a capital sentence, if any circumstances are stated in the memorial which ought to have an influence upon the decision, or any new facts alleged, apparently in favour of the prisoner, it is invariably sent to the judge, unaccompanied by any expression of opinion, for his report thereon.[s]

'Where the judge has recommended the commutation of the

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[o] Hans. D. v. 184, p. 463.

[p] Ld. Cairns, Hans. D. v. 194, p. 1326.

[q] Hawkins, P. C. bk. 2, c. 37, sec. 45. Forsyth, Const. Law, pp. 460, *n.* 463. Stephen, Com. Ed. 1874, v. 1, p. 148.

[r] Hans. D. v. 106, p. 395; 12 & 13 Vict. c. 27.

[s] Home Secy. Hardy, Hans. D. v. 190, p. 567.

sentence, there is no precedent for the home secretary standing in the way.'[t] But, in remitting the sentences of certain Fenian convicts in 1869, the government, in conjunction with the lord lieutenant, acted upon their own responsibility, and without consulting the judges.[u]

Frequently the home secretary and the judge confer together upon the case. Besides which the secretary has always the benefit of the ability and experience of the permanent under-secretary of state, in addition to the depositions, the judge's notes at the trial, and any other information he may require to assist him in finally adjudicating upon the case. With this aid he is in a position to assume full and sole responsibility for the advice he may tender to the sovereign in every such instance; and although dissatisfaction is occasionally expressed in regard to the decisions of the Home Office when the prerogative of mercy is invoked, the current of enlightened opinion is decidedly opposed to any change in the present practice.[v]

And here it should be observed that criminal cases only come under the notice of the home secretary upon an application for a remission or mitigation of sentence by the mercy of the crown, and are never submitted to his consideration on the ground that the sentence was too lenient. The conduct of a judge under such circumstances can only be reviewed by Parliament.[w] It is estimated that not less than one thousand memorials in relation to sentences of penal servitude and capital punishment are annually presented to the Home Office.[x] The general principles which influence the home secretary in advising the remission of sentences of penal servitude, whether such sentences were for life or for a

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[t] Hans. D. v. 189, p. 1514; v. 199, p. 856; v. 229, p. 35.

[u] *Ib.* v. 194, p. 311.

[v] See summary of evid. in Rpt. of Com[n] on Capital Punish[t], Com. Pap. 1866, v. 21, pp. xvii-xix.

[w] Hans. D. v. 199, p. 1629. *Ib.* v. 200, p. 1430.

[x] *Ib.* v. 190, p. 566.

term of years, were explained to the House of Commons by Mr. Secretary Walpole, on March 15, 1867.[y]

Lord Brougham on this prerogative.

Lord Brougham, in his treatise on the 'British Constitution,' dwells at considerable length, and with great sagacity, upon the principles which should influence the executive government in the exercise of the prerogative of pardoning or commuting the sentences of criminals. He sums up his observations with the following weighty words: 'It seems hardly necessary to add that no interference of parties interested, politically or personally, should ever be permitted with the exercising of this eminent function of the executive government. Absolute monarchies offer to our view no more hideous features than this gross perversion of justice. Nor do popular governments present a less hateful aspect when they suffer the interference of the multitude, either by violence, or through the press, or the debate, or any other channel in which clamour can operate, to defeat the provisions of the law.'[z]

The issue of a proclamation of amnesty, or oblivion for past offences against the crown and government of the realm, is within the acknowledged prerogative of the crown, and an amnesty or pardon may thus be granted by the crown either before or after attainder or conviction,[a] and also by a colonial governor acting under royal instructions.[b] Although, ordinarily, the exercise of the power of pardon is limited to the case of individual criminals, after conviction.[c] But in Upper Canada, after the insurrection of 1837, an Act of the provincial parliament was passed, which empowered the

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[y] Hans. D. v. 185, p. 1929; v. 174, p. 1270. And in regard to capital punish', see *Ib.* v. 186, p. 734; v. 198, p. 869.

[z] Brougham, Brit. Const. p. 330-332.

[a] 1 Inst. 120 *a*, note 4. 3 Inst. 233. Bishop, Crim. Law, c. 59, 'Pardon.' But see Colonial practice in Ld. Kimberley's circular despatch to Australian Governors in 1871, Com. Pap. 1875. v. 53, p. 627.

[b] *Ex. gra.* Sir G. Grey in N. Zealand, in 1865; Ld. Durham in L. Canada, in 1838; Sir G. F. Bowen in N. Zealand, in 1871; Ld. Dufferin in Canada, in 1875.

[c] Jls. N Zealand, H. of Rep. 1872. App. v. 1, A. No. 1, *a*, p. 10.

lieutenant-governor, upon the petition of any person charged with high treason, before his arraignment, praying to be pardoned, to grant him (by and with the advice of the Executive Council) a conditional pardon, which pardon should, nevertheless, have the effect of an attainder for high treason, so far as forfeiture of property is concerned.[d] But since confederation, the exercise of the prerogative of mercy has been withdrawn from the lieutenant-governors of the Canadian provinces, because they are no longer appointed by the crown, and is resident only in the governor-general of Canada in virtue of his commission.[e]

When Parliament may interpose

No interference by either House of Parliament with the exercise of this prerogative is justifiable, except under extraordinary circumstances. It was said by Macaulay, that 'he would rather entrust it to the hands of the very worst ministry that ever held office than allow it to be exercised under the direction of the very best House of Commons;'[f] and by Sir Robert Peel, that he would leave this prerogative in the hands of the executive, considering that it was the right and duty of the House to interfere only 'if there be a suspicion that justice is perverted for corrupt purposes.'[g]

But while direct interference with the discretion of the crown in the exercise of the pardoning power is only warranted in extreme cases of manifest injustice, it is competent for Parliament to receive petitions from or on behalf of criminals under sentence, and, if sufficient cause is shown to justify enquiry, to appoint committees for that purpose. A Mr. Palmer, who was condemned for seditious

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[d] Stat. Can. 1 Vict. c. 10. And see Lt.-Gov. Arthur's despatch of 20 Aug. 1838, in relation to this statute, commenting on apparently conflicting claims of the Gov. Gen. of Canada, and Lieut.-Gov. of U. C., in the exercise of prerog. of mercy. Jls. Ass'y. U. C. 1839. App. v. 2, pt. 2, p. 625. As to powers of colonial governors in exercise of this prerog. see Forsyth, Cases and Op'n. pp 75–82, 460.

[e] Can. Sess. Pap. 1869, No. 16.

[f] Hans. D. v. 84, p. 892.

[g] Mir. of Parl. 1835, p. 1581.

practices, by the High Court of Justiciary, in Scotland, in 1794, petitioned the House of Commons complaining of the illegality and undue severity of his sentence. The reception of his petition was at first opposed by Mr. Pitt, as being irregular and unjustifiable, but, after an adjourned debate on the question, it was agreed to without a division.[h] Since then no objection has been offered to the reception of petitions from or on behalf of prisoners complaining of their sentences, of their treatment by the court, or in prison, and praying relief, or for the remission of their sentences.[i] And every facility is allowed to prisoners to memorialise Parliament, or the Home Office for redress of grievances.[j]

Enquiries of ministers.

It has not been unusual for enquiries to be made of the administration in Parliament as to the circumstances attending the imposition or remission of sentences imposed either at the assizes or by local criminal courts having summary jurisdiction, so as to afford the ministry an opportunity of explaining erroneous impressions in the public mind.[k] The government exercise their own discretion as to whether they deem it expedient to reply to such questions or not. But it has been stated by ministers, in both Houses, in reply to questions on the subject, that, 'as a general principle, it would be inconvenient and unusual to lay before the House the grounds on which that discretion proceeds which dictates leniency or severity on the part of the responsible advisers of the crown.'[l]

On March 28, 1862, enquiry was made in the House of Lords in the case of Watson and others, convicted for a criminal offence, as

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[h] Parl. Hist. v. 30, pp. 1449–1461.

[i] See Index. to Pub. Pets. H. of C. and see proceed. on motion for an address to the crown for removal of a state prisoner from one place of confinement to another, 'where he may not be subjected to the treatment which he now endures' Mir. of Parl. 1840, p. 3534.

[j] Hans. D. v. 189, p. 1217.

[k] Mir. of Parl. 1836, p. 2511. *Ib.* 1837–8, p. 239. Hans. D. v. 163, pp. 1324, 1325; v. 164, pp. 1734, 1824.

[l] Mir. of Parl. 1840, p. 1702. Hans. D. v. 168, p. 1187. *Ib.* v. 200, p. 421.

to whether, under the peculiar circumstances attending it, the home secretary was disposed to recommend the prisoners to the royal clemency. It was replied that the newspaper report of the trial was not strictly correct, and that 'up to that time no petition on behalf of those men had been received by the secretary of state.'[m]

For the same reason, it is not usual to communicate to Parliament memorials or other papers on the subject of the exercise of this prerogative in particular cases.[n]

On April 24, 1863, a debate arose in the House of Commons on a motion for papers touching the remission of the sentence of Jessie Maclauchlan for the Glasgow murder. The home secretary, Sir George Grey, was willing to produce the papers, but feared that thereby 'a dangerous precedent might be established.' He added, that it would 'be highly inconvenient for the public interest, if this House is to become a court of appeal in criminal cases.'[o] The motion was withdrawn, but afterwards the government laid the papers on the table.[p]

The following additional precedents illustrate the doctrine and practice on this subject. Precedents.

Muir, Palmer, and others.

In 1794, upon the conviction of Muir, Palmer, and others, for seditious practices in Scotland, under a law peculiar to that kingdom, and which was more stringent than the English law on the same subject, they were sentenced to transportation for fourteen years. Their case was warmly espoused by the Whig party, and Lord Stanhope, in the House of Lords, moved for an address to the king, representing that it was the intention of the House to proceed at once to examine into the circumstances of the condemnation and sentence, and praying that meanwhile execution of the sentence might be stayed. This motion was characterised by the lord chancellor and other law lords as being unprecedented and unwarrantable, an improper interference with the course of criminal justice, and a departure from the constitutional course which permitted persons aggrieved by a sentence themselves to petition the

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[m] Hans. D. v. 166, p. 231. But on March 26, 1867, Mr. Secy. Walpole explained his reasons for advising the commutation of punishment of Wager, who had been sentenced to death for murder, *Ib.* v. 186, p. 567. Debates on Toomer's case, *Ib.* p. 1203, and on Scott's case, *Ib.* v. 189, p. 1509.

[n] Case of Greenland. Hans. D. v. 189, pp. 871–876. *Ib.* v. 234, p. 1441. In Hall's case, in 1812, papers were granted by government, but no further proceedings took place. Parl. Deb. v. 23, pp. 467, 934.

[o] Hans. D. v. 170, p. 695.

[p] Com. Pap. 1863, v. 49, pp. 265, 271, 403.

Precedents.

crown for redress. The motion was negatived on division, the mover alone voting for it.[q] Soon afterwards, the question was submitted to the House of Commons, by Mr. Adam, a learned Scotch advocate, who, in a most elaborate speech, attempted to prove the illegality of the trials, and contended that the sentences imposed had been unjustifiable and excessively severe. He moved for various documents in support of his allegations, and also for an address to the king, in which he recapitulated his reasons for regarding the sentences as illegal and oppressive, and prayed that, in consideration thereof, his Majesty would be graciously pleased to exercise the royal prerogative of mercy on behalf of the prisoners. This was opposed by the ministry, who maintained the legality and propriety of the sentences, and defended the conduct of the judges. On division the motions were negatived by large majorities.[r]

Frost, Williams, and Jones.

In 1840 a similar case occurred. Messrs. Frost, Williams, and Jones, having been convicted of treason, were sentenced to transportation. It was contended by some that the law had been strained against the prisoners, and that they were entitled to pardon, as an act of right and justice. Accordingly on this ground, and irrespective of any reference to the prerogative of mercy, the House of Commons was moved to address the crown to grant them a free pardon. This view was declared, on the part of the government, to be wholly unfounded, and proof was adduced of the legality of the sentence; whereupon the motion was negatived by a large majority.[s]

On December 3, 1867, the House of Commons was moved to address the crown to furnish, periodically, to Parliament, copies of memorials for remission of penal sentences, and received at the Home Office, and of the replies thereto; with a view to enable Parliament to judge of the operation of the criminal law, and of the general practice in the exercise of the prerogative of mercy. The home secretary (Mr. Hardy) opposed the motion, on the ground that such a return must be necessarily partial, unfair, and a great impediment in the exercise of the prerogative. The motion was withdrawn.[t] But in 1869 Mr. Bruce (home secretary), in answer to a question, explained his reasons for recommending remissions of sentences during his tenure of office.[u]

On March 22, 1870, a private member introduced into the House of Commons a Bill to alter and amend the law in regard to

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[q] Parl. Hist. v. 30, p. 1298.

[r] *Ib.* pp. 1486-1576. Com. Jour. v. 49, pp. 313 315. Arnould, Life of Denman, v. 2, p. 76.

[s] Mir of Parl. 1840, pp. 1687-1697.

[t] Hans. D. v. 190, pp. 551-572; v. 227, p. 1712.

[u] *Ib.* v. 195, p. 1358; v. 200, pp. 1148, 2104. And the complaint of the release of the Whitehaven Rioters. *Ib.* v. 211, pp 949, 1725.

the revision and commutation of capital sentences. But the Bill was thrown out at its second reading.[v] Precedents.

On April 4, 1870, a motion, in the House of Lords, for a return of cases of the exercise of the prerogative of mercy within the past three years being opposed by ministers, as contrary to practice and a dangerous precedent, was withdrawn.

On July 8, 1873, an amendment was proposed to the Supreme Court of Judicature Bill, to empower the crown to refer petitions for the remission or alteration of sentences, in cases of persons convicted of treason or felony, to the new Court of Appeal, for consideration and advice: but after a short debate the motion was withdrawn.[w]

In 1881 a return was made to an address from the House of Commons, of the cases since 1860 in which appeal had been made to the home secretary from England and Wales, for the remission or commutation of capital sentences, with the result of the same.[x]

Sir M Lopez.

On July 11, 1820, Lord John Russell moved an address to the king, for the liberation of Sir Manasseh Lopez, then in prison under sentence of the Court of King's Bench, for bribery and corruption, at the suit of the House of Commons.[y] The home secretary (Lord Castlereagh) opposed the motion, saying that 'whether the law should have its execution was the peculiar prerogative of the crown, and the responsible servants of the crown could not be justified in recommending the interposition of the royal mercy upon the mere suggestion of that House (he spoke it with perfect respect) any more than upon the application of the humblest individual of the land.'[z] After some discussion the motion was withdrawn. Nevertheless, the strong expression of feeling in the House in favour of Lopez, on account of his advanced age, and the extenuating circumstances attending his case, led to the mitigation of his sentence, and he was shortly afterwards released, having been in custody only eight months, instead of the two years for which he was condemned.[a]

Lord lieutenant of Ireland.

On April 13, 1829, the Earl of Clancarty moved, in the House of Lords, for certain documents in the case of Mr. Macdonnell, who had been sentenced to imprisonment for libel, but had been pardoned, in the king's name, by the lord lieutenant of Ireland, under circumstances which, it was currently reported, did not warrant any abridgment of his term of imprisonment. The papers asked for would explain the facts of the case. The Duke of Wellington (the premier) opposed the motion. He stated that cases of this kind,

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[v] Hans. D. v. 200, p. 423; v. 202, p. 727.

[w] *Ib.* v. 217, p. 41. Amos, Fifty Years Eng. Const. p. 435.

[x] Com. Pap. 1881, v. 76, p. 391.

[y] Com. Jour. v. 74, p. 590.

[z] Parl. D. N.S. v. 2, p. 371.

[a] Mir. Parl. 1841, p. 1894.

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though not entirely exempt from the inquisition of Parliament, ought to be least liable to enquiry by either House of any of the royal prerogatives; that, in the present instance, no sufficient parliamentary ground had been shown to warrant the House in departing from its 'usual practice and principles not to enquire into the exercise of this branch of his Majesty's prerogative.' The duke was followed by the lord lieutenant himself, who justified his conduct towards Mr. Macdonnell, alleging that the matter had been thoroughly investigated before the royal clemency had been extended to him. The motion for papers was negatived without a division.[b]

Lord Brougham's resolutions.

On August 6, 1839, Lord Brougham proposed, in the House of Lords, some resolutions respecting the administration of criminal justice in Ireland, more particularly in respect to the principles which should guide the exercise of the prerogative of mercy, and declaring the mode in which this prerogative ought to be administered. Notwithstanding the opposition of government, these resolutions were agreed to. On the following day, Lord John Russell (the premier) adverted to this vote, and stated that the proposed practice in the mode of exercising the prerogative of mercy was utterly inconsistent with that which had been hitherto pursued by secretaries of state in their recommendations to the crown, and from which it would be exceedingly inconvenient to depart; and that it was not his intention to make any alteration whatever. If, instead of resolutions, a Bill had been passed, then of course he would be bound to obey the law. Meanwhile he should consider himself justified in adhering to the present practice.[c] Accordingly upon an enquiry being made of the ministry, at the next session, whether a certain commutation of sentence had taken place in conformity with principles set forth in the aforesaid resolutions, they declined to give any answer. At the same time it was observed that, if a formal motion were made on the subject, the government would be prepared to discuss the question.[d]

Chartist prisoners.

On May 25, 1841, Mr. Duncombe proposed an address to the Queen, praying her to take into her merciful consideration the cases of all persons confined in England and Wales for political offences; referring specially to those misguided men who had been led astray by Chartist leaders (now undergoing sentence of banishment), and were suffering the penalties of the law. Viewing the object of the motion to be an attempt to obtain from the crown, through the interposition of the House of Commons, a remission of the sentences of these prisoners, Sir Robert Peel (although at the time in

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[b] Mir. Parl. 1829, p. 1255. [c] *Ib.* 1839, p. 4803.
[d] *Ib.* 1840, pp. 1702, 1717.

Opposition) strenuously opposed it. He urged that the consideration of such cases should be left 'exclusively with the crown;' that the government, in exercising the prerogative of mercy, 'ought not to be influenced by any opinion which the House of Commons might express;' and he asserted it to be a dangerous precedent for the House to 'fetter the discretion and judgment of the crown by expressing any recommendation on such subjects.' Acting on this principle, when secretary of state, he had himself resisted a motion for an address for the remission of the remaining term of Mr. Hunt's imprisonment in Ilchester gaol; which was an attempt to induce the House to depart from that which had been its unvaried practice ever since the Revolution, namely, that nothing but 'circumstances of an overwhelming nature should tempt the House to interfere with this most important prerogative.'[e] Lord John Russell (the colonial secretary) also opposed the motion, and pointed out the general ill effects of such an interference on the part of the House, although admitting that there might be exceptional cases. The motion for the address was negatived by the casting vote of the Speaker, who stated that he considered the proposed vote was an interference with the royal prerogative.[f]

Precedents.

On March 10, 1846, Mr. Duncombe proposed an address to the Queen, that she would be graciously pleased to consider the recent petitions to Parliament in favour of a restoration from exile of the state prisoners Frost, Williams, and Jones; but Macaulay, Sir Robert Peel, Lord John Russell, and other leading statesmen, while admitting the abstract right of the House to advise as to the exercise of this or any other prerogative, all concurred in opposing the motion, as being of a dangerous tendency, and a departure from the rule imposed upon themselves by the discretion of former Houses of Commons, of non-interference with the exercise of certain prerogatives, which should be left to the unfettered discretion of the executive government. The address was negatived by a large majority.[g]

Frost, Williams, and Jones.

On June 30, 1864, it was moved in the House of Lords, to resolve that, considering the extent to which agrarian outrages prevail in certain counties in Ireland, and the difficulty which exists in obtaining convictions for such offences, this House is of opinion that the power of the lord lieutenant of Ireland to remit the whole or a portion of the sentences of persons convicted of such crimes should be exercised with greater care and circumspection; and this House observes with regret that the lord lieutenant ordered the

Lord Lieutenant of Ireland.

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[e] Parl. D. N.S. v. 7, p. 34.

[f] Mir Parl. 1841, pp. 1894-1903. *Ib.* 1839, p. 1715.

[g] Hans. D. v. 84, pp. 881-921. Case of the Dorchester prisoners, Mir. Parl. 1835, p. 1568. Case of the Canadian prisoners, Hans. D. v. 66, p. 237

Precedents

release of certain prisoners (therein named) under sentence for an agrarian offence, upon grounds which appear to be insufficient. The motion was opposed by the government, on the ground that nothing should induce the House to agree to such a motion unless it could be distinctly shown 'that there had been a very gross want of discretion in the administration of the prerogative of mercy, or that the person exercising it had been influenced by some corrupt motives.'[h] The sense of the House was evidently against the motion, and it was withdrawn.

Thom's case.

In 1838, however, a case occurred of sufficient gravity and importance to give rise to discussions, in both Houses of Parliament, as to the circumstances under which the prerogative of mercy had been exercised, and which led to the appointment of a committee of enquiry by the House of Commons. A person of the name of Thom had been convicted of perjury, and sentenced to transportation for six years. Shortly after conviction, it was discovered that he was insane; he was thereupon transferred to a lunatic asylum, where he remained four years, when he received a free pardon, and was discharged. Not long afterwards, his insanity assumed a more violent aspect, and he became concerned in a riot, which led to serious loss of life, he himself also being killed. This sad catastrophe was brought under the notice of Parliament, and documents explanatory of the case were called for in both Houses. A motion for the appointment of a committee of enquiry into the circumstances attending the discharge of Thom was submitted to the House of Commons, the mover commenting severely upon the conduct of the secretary of state (Lord John Russell) in exercising the prerogative of mercy in favour of such a dangerous character. His lordship made a satisfactory explanation, but acquiesced, on the part of government, in the appointment of a committee of enquiry.[i] The committee reported merely the minutes of evidence they had taken, which sufficed to acquit the government of any blame in the transaction,[j] and no further discussion or proceedings took place in the matter.

On August 13, 1867, Mr. Reardon moved an address to the Queen, that she would be pleased to extend her most gracious pardon to all persons now in prison in the United Kingdom and the colonies for political offences. After a few words from Mr. Secretary Hardy, the motion was negatived without a division.[k]

On July 19, 1870, a member moved in the House of Commons

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[h] Hans. D. v. 176, p. 489.

[i] Mir. Parl. 1838, pp. 4562, 5117, &c.

[j] Com. Pap 1837-8, v. 23, p. 353. For career of Thom *alias* Sir Wm. Courtenay, see Knight Hist. of Eng. v. 8, pp 412-417.

[k] Hans D. v. 189, p. 1515. *Ib.* v. 222, p. 1759.

that an address should be presented to her Majesty that she would be pleased to grant a free pardon to Richard Fennelly, who had been convicted of bribery at an election, and had been refused a certificate of indemnity by the election commissioners. After a defence of the sentence by the attorney-general and home secretary, the motion was negatived on a division. Precedents.

On August 1, 1876, and on July 20, 1877, Mr. O'Connor Power moved resolutions in favour of pardoning certain persons who are and have been for many years undergoing punishment for offences arising out of insurrectionary movements in Ireland; but after debate the motions were negatived. The form of this motion being for a resolution, and not for an address to the crown, was objected to by leading members as unconstitutional. Nevertheless, the objection was not pressed, and the motion was negatived on its merits.[1]

In January 1882, the home secretary (Sir W. Harcourt), in reply to a petition from Oxford University for the release of the Rev. Mr. Green, stated that he had been advised by the law officers of the crown 'that the powers of the crown to discharge persons from custody would not be rightfully, or even constitutionally, exercised in the case of a person imprisoned for contempt of court, committed by persistent disobedience to the lawful command of a competent tribunal.' Rev. Mr. Green.

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[1] Hans. D. v. 235, pp. 1603-1626.

CHAPTER XII.

ROYAL PREROGATIVE IN MATTERS OF JUSTICE.

Prerogative in administering justice and preserving the public peace.

THE next prerogative which claims our attention is that which appertains to the king as the fountain of justice,[a] and general conservator of the peace of the realm.

So far as the maintenance of the public peace is concerned, the appointment and jurisdiction of officers to preserve the same are principally regulated by statutes, which are administered under the general supervision and responsibility of the home secretary.[b]

'By the fountain of justice, the law does not mean the author or original, but only the distributor. Justice is not derived from the king, as from his free gift, but he is the steward of the public, to dispense it to whom it is due. He is not the spring, but the reservoir, from whence right and equity are conducted by a thousand channels to every individual.' Though justice flows from the king as its fountain, he cannot administer it personally, or authorise any deviation from the laws.[c] It is an undoubted prerogative of the crown to erect courts of judicature; nevertheless, the crown alone cannot erect a court, or enable it to proceed, otherwise than according to the common law. Thus the co-operation of Parliament is indispensable to enable the crown to erect a court of civil law, a court of equity, or a new court with a new jurisdiction.[d] Moreover, the

Co-operation of Parliament therein.

[a] Palgrave, Eng. Const. v. 1, p. 282.

[b] Cox, Inst. p. 502. See *post*, v. 2. p. 215. *Ante*, p. 271.

[c] Petersdorff, New Abrdmt. v. 6, p. 215.

[d] Bowyer, Const. Law, pp. 170, 171, 496. Forsyth, Const. Law, p. 186.

expense attending the administration of justice must necessarily be defrayed out of moneys which have been voted by Parliament. When any new courts of justice are required, it is usual to establish them by statute, so that Parliament, having concurred with the crown as to the necessity for the same, is morally bound to appropriate the needful supplies for their establishment and support.[e]

The great function of Parliament has been declared to be 'the maintenance of the law and the redress of grievances.'[f] Thus it is 'one of their principal duties and functions to be observant of the courts of justice, and to take due care that none of them, from the lowest to the highest, shall pursue new courses unknown to the laws and constitution of this kingdom, or to equity, sound legal policy, or substantial justice.'[g] By the theory of our constitution, those to whom the administration of justice is entrusted are not responsible to Parliament, except for actual misconduct in office. Otherwise, they occupy a position of complete independence; and necessarily so, for they are bound to administer the law without fear or favour, and it may become their duty to pronounce judgments, and to take proceedings, of which the House of Commons itself may disapprove.[h] The express power which is given to the two Houses of Parliament by the Acts 12 & 13 Will. III. c. 2, and 1 Geo. III. c. 23, to address the crown for the removal of judges from office, who are otherwise declared to be irremovable, is indicative of the duty that devolves upon Parliament to watch the course of the administration of justice.[i] And Parlia-

Proceedings against judges.

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[e] Hans. D. v. 161, pp. 510–512; and see Smith's Parl. Rememb. 1861, p. 18.

[f] 4 Inst. 9, 11. Rot. Parl. 1 Hen. IV. 36.

[g] Rpt. on Lords' Proceed. on Mr. Hastings' Trial. Com. Jour. v. 49, p. 517. Stubbs, Const. Hist. v. 2, p. 605.

[h] Mr. Childers' evid. before Legal Depts. Comm., Com. Pap. 1875, v. 30, p. 659.

[i] Smith's Parl. Rememb. 1860, p. 232.

ment 'has not only the right to address the crown for the removal of a particular judge, but, in cases of misconduct, it has the right of exercising a superintending control over the manner in which they discharge their duties, and to institute enquiries relative thereto.'[j] 'The judges of the land act under responsibility; and any misconduct of which they may be guilty may be enquired into, and animadverted upon, by either House of Parliament.' Such enquiries ordinarily begin, by questions addressed in either House to members of the administration, for information in regard to the matter of complaint.[k]

Limits of parliamentary interposition.

But in the discharge of these high inquisitorial functions, Parliament has prescribed for itself certain constitutional rules and limitations, to prevent undue encroachment upon the independence of the judicial office, which is in itself one of the main bulwarks of English liberty. And it devolves upon the advisers of the crown, as those who are peculiarly responsible for preserving the purity of justice inviolate, to be foremost in vindicating the independence of the judges by whomsoever it may be assailed, and in guarding against the intrusion of party influences in any proceedings of Parliament in matters affecting the administration of the law.[l]

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[j] Hans. D. v. 67, p. 1006. See discussions in Parliament in regard to the fitness of Ch. Just. Lefroy to continue to preside over Court of Q. B. in Ireland, when over ninety years of age. (*Ib.* v. 182, p. 1629; v. 183, pp. 353, 778.) His lordship resigned his seat on the bench very soon afterwards, when the Derby administration took office. (*Ib.* v. 184, p. 835.)

[k] Ld. Chan. Campbell, Hans. D. v. 163, p. 824. Amos, Fifty Years Eng. Const. p. 413. See discussions in H. of C. on certain expressions used in public by Irish judges. (Mir. Parl. 1833, pp. 3925–3927, and Hans. D. v. 178, p. 196. *Ib.* v. 227, p. 1871.) Enquiry respecting the language and demeanour of a Vice-Chan. in open court. (Hans. D. v. 172, p. 871.) Enquiry respecting the undue severity of certain sentences passed by the Dy. Asst. Judge of the Middlesex Sessions. (*Ib.* v. 175, p. 1061.) Enquiry respecting the great inequality of sentences frequently passed at assizes on criminals. (*Ib.* v. 198, pp. 1373, 1530). Debate upon an alleged improper exercise of the power of judges to punish for contempt of court. (*Ib.* v. 224, p. 1743. *Ib.* v. 226, p. 375.)

[l] Hans. D. v. 215, p. 1207. L. T. v. 53, p. 58. *Post*, v. 2.

Criminative charges Parliament.

Upon this principle, it is inexpedient for ministers to sanction the reception by Parliament of motions or petitions complaining of the judges, unless under circumstances which would justify enquiry into the matter of complaint, and where there is a *bonâ fide* intention of proceeding thereon.[m] And it is the invariable practice of Parliament never to entertain criminative charges against anyone except upon the ground of some distinct and definite basis. The charges preferred should be submitted to the consideration of the House in writing, whether it be intended to proceed by impeachment, by address for removal from office, or by committee, to enquire into the alleged misconduct, in order to afford full and sufficient opportunity for the person complained of to meet the accusations against him.[n]

Matters *sub judice.*

It is also highly irregular to bring into discussion, in either House of Parliament, any matters, whether they relate to civil or criminal cases, which are undergoing judicial investigation, or are about to be submitted to courts of law; as it leads to the imputation of a desire to interfere with the ordinary course of justice.[o] This observation applies with additional force to the House of Lords, which, being itself the highest court of judicature, should carefully refrain from prematurely and prejudicially discussing the merits of a case that has been assigned, by law, to the consideration of another tribunal.[p] If, upon grounds of public policy, it should

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[m] Disraeli, Hans. D. v. 223, p. 463. Atty.-Gen. Baggallay, *Ib.* v. 225, p. 90. *Post*, v. 2.

[n] Case of the Bishop of Bath and Wells, 1852. Hans. D. v. 122, pp. 465, 613, 948-953. Case of Ch. Just. Monahan. Hans. D. v. 163, pp. 823, 898, 981; and again, *Ib.* v. 178, p. 196. See Mr. Wynn's observations in Parl. D. N.S. v. 13, p. 1249. Rpt. Sel. Comm[e]. on Corrupt Practices Com. Pap. 1870, v. 6, p. 17

[o] Mirl. of Parl. 1831, pp. 239, 523. Hans. D. v. 164, p. 566; v. 165, p. 135; v. 166, p. 109. Case of the seizure of the *Alexandra*, *Ib.* v. 170, p. 709; *Ib.* v. 208, p. 433; v. 213, p. 852. Parliament cannot constitutionally entertain matters which come within the province of a jury to determine. Fost. and Fin. N. P. C. v. 3. p. 560, *n.* Hans. D. v. 208, pp. 1786, 1869

[p] Mir. of Parl. 1831, p. 523; 1831 2, p. 1161.

be expedient to institute a debate on a question of this kind; the House should nevertheless refrain from asking for papers to be laid before them, in any case that is waiting for trial or undergoing judicial investigation.[q]

Furthermore, it is not customary to communicate to Parliament the evidence adduced in trials before the ordinary legal tribunals, unless some special reasons should justify the calling in question of any portion of their proceedings.[r]

Conduct of judges not to be lightly impugned.

Complaints to Parliament in respect to the conduct of the judiciary, or the decisions of courts of justice, should not be lightly entertained. 'If there is a failure in the administration of justice, from whatever cause, affecting any judge, both Houses of Parliament may address the crown, to remove that judge from office.'[s] But 'nothing could be more injurious to the administration of justice than that the House of Commons should take upon itself the duties of a court of review of the proceedings of an ordinary court of law;' or of the decisions of a competent legal tribunal,—or, that it should 'tamper with the question whether the judges are on this or that particular assailable,' and endeavour 'to inflict upon them a minor punishment'[t] by subjecting their official conduct to hostile criticism. Parliament should abstain from all interference with the judiciary, except in cases 'of such gross perversion of the law, either by intention, corruption, or incapacity, as make it necessary for the House to exercise the power vested in it of advising the crown for the removal of the judge.'[u] The proper proceedings in such a case are explained in a

Interference with prosecutions.

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[q] Case of the so-called 'Confederate Rams.' Hans. D. v. 173, p. 965.

[r] Earl Derby. Hans. D. v. 187, p. 368. Case of Fulford and Wellstead. *Ib.* v. 188, p. 1147; *Ib.* v. 208, p. 426.

[s] Sir G. Grey, *Ib.* v. 183, p. 793.

[t] Mr. Gladstone, Hans. D. v. 209, p. 757; *Ib.* v. 224, p. 585; v. 226, p. 561; v. 228, p. 965; v. 234, p. 1558.

[u] Ld. Palmerston, Hans. D. v. 140, p. 1561; Sir R. Peel's speeches in the case of Baron Smith, Mir. of Parl. 1834, pp. 139, 312; and debate on Dr. Kenealy's motion in regard to trial of Queen v. Castro.

chapter of the second volume of this treatise. In like manner the government should not be called upon to make a representation to the lord chancellor in respect to decisions or conduct of magistrates, unless they are satisfied that a case has been made out to justify such a proceeding.[v]

Corrupt practices

By the Act 26 Vict. c. 29, § 9, considered in connection with the Act 31 & 32 Vict. c. 125, § 16, it is understood that the duty of considering a report from the judge who has tried a controverted election, or from a royal commission, wherein certain persons are charged with bribery, treating, or other corrupt practices, is assigned to the attorney-general, who is empowered, at his discretion and on his own responsibility, to institute the necessary proceedings against the offending parties.[w] In proceedings in cases of bribery and other misconduct arising out of parliamentary elections, it had been usual heretofore for the House of Commons to take the initiative, and to order the attorney-general to prosecute offenders;[x] but since the passing of the Acts the initiative has been left to the attorney-general.[y] When that officer is about to institute a prosecution against individuals for offences against the purity of election, under the statute, the House is at liberty to interpose with an address to the crown, praying that such a prosecution may be relinquished.[z] But under other circumstances, as where there is ground for believing—whether from public notoriety or from investigations of parliamentary committees—that indictable offences have been committed, the initiative in criminal

and other indictable offences.

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[v] Hans. D. v. 216, p. 1497, and see *post*, v. 2.

[w] See Hans. D. v. 171, p. 1048; *Ib.* v. 183, p. 1460; v. 193, p. 1746; v. 214, p. 1041.

[x] See the principles which governed the House in ordering such prosecutions, as explained by Mr. Wynn, in Mir. of Parl. 1841, pp. 2277–2282; Hans. D. v. 63, pp. 819–843; v. 126, p. 1051. Com. Jour. v. 86, p. 779.

[y] Atty.-Gen., Hans. D. v. 212, pp. 1628, 1635, 1810. But in regard to motions for an address for the issue of commissions of enquiry, see *post*, v. 2.

[z] Hans. D. v. 158, pp. 1752–1756.

proceedings should be left to the executive government. And the House should not interfere with their discretion, except in very extreme cases.[a] This rule applies with equal force to all cases wherein the attorney-general is called upon to exercise *quasi*-judicial functions.[b] For the House has no right 'to constitute itself into a court of appeal from any description of judicial authority, or to interfere, by resolution, with the course of judicial proceedings; even in matters arising out of parliamentary elections.[c] Otherwise, it would be impossible to avoid the suspicion that the administration of justice had been encroached upon for political purposes.

Information to be laid before Parliament.

Parliament, however, has a right to demand full information upon all matters affecting the administration of justice, including the appointment of magistrates and other judicial officers; and papers on this subject, when moved for, are usually granted as a matter of course: unless the application should involve an irregular and unconstitutional interference with the ordinary course of law, or is for information which it would be prejudicial to the public service to supply.[d]

Confidential communications.

But it is not the practice of either House of Parliament, as a general rule, to ask for copies of legal opinions given by the law officers of the crown to the executive government (or furnished to a public corporation[e]), or cases submitted to the law officers for their opinion,[f] nor is it customary for government to communicate them to Parliament should they be applied

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See May, Parl. Prac. ed. 1883, p. 728. Case of Directors, &c., of the West Hartlepool Harbour and Railway Co., Hans. D. v. 171, pp. 1294–1302; and see debates as to the mode of conducting the prosecution in the case of Regina *v.* Overend, Gurney & Co., *Ib.* v. 197, pp. 821, 975, 1194.

[b] Hans. D. v. 221, p. 1404.

[c] *Ib.* v. 158, p. 1752; v. 159, pp. 145, 201; v. 234, p. 584.

[d] Mir. of Parl. 1837, p. 2182. Hans. D. v. 165, pp. 372, 543; *Ib.* v. 232, p. 1358; v. 234, p. 1440.

[e] Hans. D. v. 102, p. 1169.

[f] Rep. Com. Thames Embankment, Coms. Pap. 1871, v. 12, p. 415. Hans. D. v. 233, p. 1365.

for.[g] A similar doctrine was laid down in Lower Canada, as appears by the reply of his Excellency Governor Gosford to an address of the House of Assembly, on December 11, 1835, for copies of legal opinions, wherein he states that such communications were 'confidential,' and, 'except in peculiar cases, should be held sacred.' They are considered as confidential.[h] Legal opinions.

But it is not even usual for a minister to state to the House the substance of an opinion given by the crown law officers; though this may be done at the discretion of the government.[i] But on May 9, 1867, Earl Derby (the premier) read to the House of Lords the opinion given by the then law officers of the crown, in 1856, and the opinion given by the law officers of the crown under his own administration, in 1866,—for the guidance of the government in regard to the legal right of prohibiting the holding of public meetings, or of preventing the gathering together of large assemblies of people (not behaving in a disorderly manner) in the metropolitan parks. He read these opinions to justify the proceedings of government in attempting to prevent the holding of political meetings in Hyde Park. Earl Russell declared this to be 'a most unusual course, and one which may be productive of injury at a future time.'[j]

On August 28, 1866, Sir C. Darling, ex-governor of Victoria, applied to the colonial secretary for copies of opinions of the crown law officers, in reference to the alleged illegality of some of his proceedings as governor of that colony, with a view to his own defence and justification. In reply, he was informed that consistently with the practice of the public service he could not be furnished with 'copies of the opinions given to the secretary of state by the crown lawyers in their capacity of the confidential advisers of the government.'[k]

The like rule applies with respect to communications between law officers of the crown concerning particular

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[g] Mir. Parl. 1830, pp. 387, 1877–1879; 1840, p. 2120. Hans. D. v. 74, p. 568; *Ib.* v. 161, p. 542; *Ib.* v. 169, pp. 1328–1393; *Ib.* v. 208, p. 1649; v. 218, p. 493.

[h] Hans. D. v. 201, p. 1853; v. 231, p. 257. Under peculiar circumstances opinions have been presented to Parliament, the law officer himself acquiescing therein. Mir. Parl. 1831, p. 2111; Hans. D. v. 184, p. 49.

[i] Hans. D. v. 172, pp. 250, 434; *Ib.* v. 194, pp. 621, 828, 831.

[j] Hans. D. v. 187, pp. 220, 228; also see p. 235.

[k] Corresp. rel. to recall of the late Gov. of Victoria. Com. Pap. 1867, v. 49, p. 609.

trials; or the judge's notes taken at a trial;[1] or coroner's notes, which, as they partake of a judicial character, can only be produced with the consent of the officer himself.[m] Opinions given by judges to the government on a Bill pending in Parliament ought not to be produced for the purpose of influencing the House in its legislative capacity, or to form the groundwork of legislative enactment[n]

By ancient usage, the sovereign, as well as the House of Lords, whether acting in their judicial or in their legislative capacity, have a right to require the opinions of the judges of England upon abstract questions of law, upon which correct advice is deemed to be necessary.[o]

The duty of Parliament in reference to abuses which may occur in the administration of justice, will receive further illustration from the following precedents.

Precedents.

Prerogative Court.

On July 17, 1828, Mr. Hume presented to the House of Commons a petition complaining of abuses in the Prerogative Court, and especially of the misconduct and malversation in office of the presiding judge. He went into a detailed account of the alleged abuses, and concluded by remarking that it was doubtful whether the government should not themselves institute an enquiry therein, in preference to an investigation by a committee of the House. During the debate which ensued, it was shown that the charges in the petition were destitute of foundation, whereupon the motion that the petition do lie on the table was negatived.[p] On the following day, upon motion of Mr. Hume, a return of the amount of fees allowed and received in this court, during certain periods, was ordered, with a view to determine the existence of certain of the abuses attributed to the officers of the court.[q]

Police force.

On June 27, 1833, a petition was presented to the House of Commons from the inhabitants of two villages near London, com-

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[1] Mir. Parl. 1830, pp. 527, 1667–1688. In another case, however, copies of 'judge's notes' were ordered, *Ib.* 1834, p. 1243. But see Hans. D. v. 171, p. 809; v. 186, p. 904; v. 206, p. 1080.

[m] Mir. Parl. 1841, p. 2207.

[n] *Ib.* 1833, p. 2559.

[o] See historical notes and precedents in the opinion of the Supreme Court judges of Massachusetts, given to the Legislature on money bills in 1878 (Pub. Docts. 1879); and for later precedents, see Denison and Scott, Lords' Practice on Appeals, pp. 19–26.

[p] *Ib.* 1828, pp. 2584–2597.

[q] *Ib.* p. 2623.

plaining of the employment of the metropolitan police force as spies, and asking protection against the evils resulting from such a practice. The petition was referred to a select committee, which on August 6 reported to the House three resolutions, declaring that the conduct of a certain policeman named Popay had been deserving of 'most grave and decided censure;' also, 'solemnly deprecating any approach to the employment of spies, in the ordinary acceptation of the term, as a practice most abhorrent to the feelings of the people, and most alien to the spirit of the constitution.' Whereupon Popay, who had been heard, by counsel, before the select committee in his own defence, was dismissed from the service.[r] Precedents.

On June 12, 1868, a motion was made in the House of Commons for the appointment of a select committee to enquire into the causes of the dismissal of Police-Sergeant Stone from the force; but after debate, wherein this dismissal was explained and justified, the motion was withdrawn.[s]

On February 13, 1834, Mr. Daniel O'Connell brought before the House of Commons a complaint against Sir William Smith, one of the barons of the Court of Exchequer in Ireland, for 'neglect of duty as a judge, and for the introduction of political topics in his charges to grand juries.' In proof of these accusations, he quoted from various returns on the table of the House, and from certain of the judge's charges; and concluded by moving that a select committee be appointed to enquire into the conduct of Mr. Baron Smith in respect to these accusations, which was agreed to.[t] On February 21, however, it was represented to the House that a *primâ facie* case, sufficient to justify the removal of Baron Smith from the bench, by a proceeding under the statute, had not been made out; and that Parliament had no constitutional right to institute an enquiry into the conduct of a judge with any other view than that of addressing the crown, under the provisions of the statute for his removal; else 'would the independence of the judicial bench be a mockery, and the Act of 1 Geo. III. no better than waste paper.'[u] It was accordingly moved, that the order for the appointment of the committee be discharged; which, after a long debate, was concurred in by the House. Baron Smith.

On March 23, 1841, Lord Mahon submitted to the House of Commons a resolution, 'That in the opinion of this House the large increase in the number of convicts to be permanently confined in the hulks of Great Britain, although sentenced to transportation, in Hulk system.

[r] Com. Jour. 1833, pp. 537, 641. Com. Pap. 1833, v. 13, p. 401. May, Const. Hist. v. 2, p. 292.

[s] Hans. D. v. 192, pp. 1478–1483. And see case of Const. Maloney, *Ib.* v. 232, p. 826; v. 234, p. 1846.

[t] Mir. Parl. 1834, p. 123.

[u] *Ib.* p. 304; and see Ld. Chelmsford's observations in Hans. D. v. 182, p. 1636.

Precedents.

pursuance of the minute of the secretary of state for the Home Department, dated January 2, 1839 [which declared, that convicts sentenced to seven years' transporation shall be, as far as practicable, employed in the hulks and dockyards at home and at Bermuda], is highly inexpedient.' This resolution was chiefly intended to restrain an 'undue entension of the prerogative of the crown,' which nevertheless was exercised in accordance with the letter of the law. The secretary of state was by law empowered, at his discretion, to retain in confinement at home any persons who might be sentenced to transportation. But this authority had been confessedly granted for the purpose of enabling the secretary to 'distinguish between particular cases; that in cases of early youth, of extreme old age, or any other special circumstances, he might inflict imprisonment at home upon those to whose offences the law had affixed the punishment of transportation.'[v] Moreover, the hulk system, as a mode of secondary punishment, had proved injurious to the criminal, and had been expressly condemned by a committee of the House of Lords in 1835. With a view to prevent an undue extension of the hulk system, Lord Mahon asked the House to adopt the above resolution. In reply, Lord John Russell (colonial secretary) admitted that the hulk system was objectionable, but did not think it advisable that the House should come to any resolution on the subject; he therefore moved the previous question. After a debate, Lord Mahon determined to press his motion, when it was carried, against the government, by a majority of twenty-one.[w] A month afterwards, Lord John Russell intimated that it was the intention of government to continue, to a limited extent, the transportation of criminals; and to establish penitentiaries for criminals retained in this country, instead of sending them to the hulks.[x] It was subsequently stated, in the House of Lords, that the hulk system had been abandoned, in consequence of the foregoing resolution.[y]

Baron Gurney.

On May 11, 1843, Mr. Duncombe presented to the House of Commons a petition from W. Jones, a prisoner in the Leicester county gaol, complaining of the conduct of Baron Gurney, during his trial before that judge, on a charge of sedition, whereby Jones alleged that he had been deprived of an opportunity of vindicating his innocence to the jury. In such a case the law afforded no

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[v] Mir. Parl. 1841, p. 969.

[w] *Ib.* p. 982.

[x] *Ib.* 1841, p. 1286.

[y] Hans. D. v. 169, p. 859; and see a debate in the H. of C. on March 9, 1863, on Transportation and Penal Servitude. By the closing, in 1867, of Western Australia against any more convicts, transportation, in respect of all but military convicts, has been brought to an end. Fras. Mag. v. 79, p. 661; Hans. D. v. 194, p. 333. 'Penal servitude,' either at home or abroad, has been substituted by law for transportation. Stephen, Hist. Crim. Law, ed. 1883, v. 1, p. 482.

remedy, and an application to the crown for a remission of the sentence had been unsuccessful. Wherefore Mr. Duncombe moved that an address be presented to her Majesty, to be pleased to take this case into her merciful consideration. In reply, the home secretary (Sir James Graham) showed that there was no sufficient ground for impugning the conduct of the judge, and that it was inexpedient for the House to advise the crown in regard to the exercise of its prerogative of mercy, 'unless circumstances strongly warranted the adoption of such a course.' After some further debate, the motion was withdrawn.[a] Precedents.

On February 28, 1856, a motion was made in the House of Commons for a copy of a judgment recently delivered in an Irish court of law, and papers showing further proceedings consequent thereupon. The mover alleged that the judge had manifested incapacity at this trial, which had led to grievous consequences to the parties interested therein. In reply, Lord Palmerston denied that there had been any abuse in the administration of the law in this case, which could justify interference on the part of Parliament. He stated that the judgment complained of had been confirmed by a superior court, and 'was at this moment the subject of a judicial proceeding pending in the highest court of appeal.' The question was negatived, without a division.[a] Irish judge.

The point involved in the preceding case had already been decided by the House of Commons in the case of the Deacles, in 1831. These parties had a grievance against a magistrate, which had been submitted to the examination of a court of law. The decision of the court was adverse to the Deacles; whereupon they petitioned the House of Commons for the appointment of a committee to investigate their complaint. Although both parties were desirous of a parliamentary enquiry, the House refused to grant the committee, on the ground that it was not according to usage to enquire into a matter which had already undergone judicial examination, and could be submitted, on appeal, to a higher court.[b] The Deacles.

On May 6, 1844, a motion was made in the House of Lords to condemn the appointment of a certain person to the office of stipendiary magistrate in Ireland, on account of his having published intemperate and extreme opinions upon public political questions. This motion was regarded as a censure upon the lord lieutenant, for having made this appointment, and upon the imperial government for having acquiesced therein. But the charge of unfitness for office Irish magistrates.

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[a] Hans. D. v. 69, pp. 189–206.

[a] *Ib.* Case of Talbot *v.* Talbot. Hans. D. v. 140, pp. 1551–1561.

[b] Mir. Parl. 1831, pp. 2213, 2344, 2463; see also debate on Mr. Hunt's motion on March 15, 1832, for a committee to enquire into the loss of life at the Manchester riots, in 1819; which, for a similar reason, was opposed by government, and negatived.

Precedents.

not having been substantiated, the motion was negatived without a division.

Mr. O'Driscoll.

On July 16, 1844, a motion was made, in the House of Lords, for copies of memorials addressed to the Irish government, recommending the restoration of Mr. Alexander O'Driscoll to the commission of the peace, who had been dismissed therefrom on account of violent and unbecoming conduct, and yet, within six months afterwards, had been reinstated. At first, the government opposed this motion, defending the right of the Irish lord chancellor to act as he had done in this case; but on hearing the facts elicited in debate, in proof of Mr. O'Driscoll's unfitness for office, acquiesced in the motion for papers. No further proceedings, however, took place in the House of Lords, in reference to this appointment; but on July 23, a motion was made in the House of Commons, for an address to her Majesty, praying for the removal of Mr. O'Driscoll from the Commission of the Peace. In reply, the government admitted that this subject 'was a very proper one for the House to consider;' and that 'there might be circumstances in which it would be the duty of the House to address her Majesty to remove a magistrate from the Commission of the Peace,' but the Irish secretary said, 'he thought that when a member called upon the House thus to interfere with the prerogative of the crown, exercised by its highest law officer, he ought to be prepared to show that the power had been exercised either corruptly or mischievously.' After some further debate, the motion was negatived.[c] Having soon afterwards again misconducted himself, further enquiry was instituted by the Lord Chancellor of Ireland into Mr. O'Driscoll's conduct, which led to his final dismissal from the magistracy.[d]

Irish magistrates.

In 1861, a case occurred in reference to an Irish magistrate, which gave rise to much discussion out of the walls of Parliament, and which strikingly exemplifies the limits of parliamentary interference in matters affecting legal rights. Mr. Adair, an Irish landlord, and a magistrate for the county of Donegal, evicted a number of tenants from his estate, in punishment for the murder of his steward, being unable to discover the perpetrator of the deed. The attention of the Irish government having been directed to this high-

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Hans. D. v. 76, pp. 1319–1320.

[d] *Ib.* v. 80, pp. 827, 857, 1106. See also discussion in H. of C. Feb. 25, 1845, on motion for papers respecting dismissal of Ld. Lucan from the Commission of the Peace, and his subsequent restoration thereto, and appointment to lord-lieutenancy of county of Mayo. The government defended the conduct of the Irish authorities, but agreed to the production of the papers, that the facts might be fully known. See correspondence relative to dismissal of Mr. Havens from Commission of the Peace, Com. Pap. 1862, v. 44, p. 347. Also case of Mr. Madden, Hans. D. v. 200, p. 908. Also case of three Irish magistrates, *Ib.* v. 236, p. 409.

Precedents.

handed proceeding, a correspondence ensued with Mr. Adair, in which he defended the course he had pursued, in the interests of life and property, denying that he had done anything that could not be justified. The government remonstrated with him for what he had done, but admitted that he had not transgressed the limits of the law, or exceeded his rights as a landlord. The case excited a strong feeling of indignation throughout Ireland, and great sympathy for the suffering tenantry. During the progress of these events, the attention of the House of Commons was called to the subject, on two occasions, by enquiries of the ministry as to whether they were cognizant of what had occurred, and whether they intended to recommend the removal of Mr. Adair from the Commission of the Peace. To this the government replied, that while they had not hesitated to express to Mr. Adair their disapproval of his conduct, they did not feel justified in removing him from the magistracy, as he had not exceeded his legal rights.[e] Not satisfied with this explanation, a motion was made on June 24, in the House of Commons, for an address to the Queen, for an enquiry into the conduct of Mr. Adair, in reference to these transactions, 'with a view to consider whether it is fitting he should continue to hold her Majesty's commission.' The government opposed the motion (waiving the 'technical plea that it was beyond the province of the House') on the ground that nothing had occurred which would justify the exercise of the prerogative in the dismissal of Mr. Adair from the magistracy; and the question was negatived.[f] A few days afterwards another member moved to resolve 'that it is expedient that a full and efficient enquiry should be instituted into all the circumstances attending these transactions.' Lord Palmerston, however, while admitting that it was right to discuss the matter, in order to elicit the opinions of the House upon the case, resisted the motion, as being an attempt to induce the House to exercise its powers in a manner not justified by constitutional principles. He asserted that "it would be a most dangerous and outrageous abuse of the power of the House if it interfered with the private transactions of any individuals, within the limits of their legal rights. If they have done anything beyond the limits of the law; if, from any motives whatever, they may have exceeded their power, the law itself will correct the evil. But it is not necessary for this House to interfere unless the government has had a duty to perform, and has neglected to perform it.'[g] On division, the motion was negatived by a large majority. Undeterred by this defeat, the general question was soon afterwards revived, in a different shape. On July 5, it was moved that a committee be appointed to enquire into the causes and circumstances of certain

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Hans. D. v 162, pp. 523, 845. [f] *Ib.* v. 163, p 1513.
[g] *Ib.* v. 164, pp. 243-252.

Precedents.

evictions which had lately taken place in another part of Ireland. These evictions, unlike those at Derryveagh, had not resulted from a suspicion of Ribbonism, but were apparently owing to religious dissensions; it being alleged, on the one hand, that they had all occurred because the tenants refused to send their children to the Protestant schools, while by others this statement was denied upon oath. The chief secretary for Ireland opposed the motion, on general principles, without entering into particulars concerning it. He remarked that every argument that had been urged against the interference of the House in the Derryveagh case, was still more applicable to the present. 'Such an enquiry would be wholly without profit; it would not tend to elevate the character of the House; but it would make the House for the first time usurp the functions of the tribunals in a way that had undoubtedly never been done before. The powers of this House are without limit; but they are limited by our own sense of discretion, and guided by the precedents of former generations, and I believe that no precedent can be produced of the House having acted in a manner so contrary to its functions, and so inconsistent with its prudence.' Whereupon, without further debate, the question was negatived.[h]

Jurors.

On June 20, 1862, a motion was made in the House of Commons for the appointment of a committee to enquire into certain irregularities concerning jurors at the last assizes at Tyrone. The government admitted that the conduct of the high sheriff had been blamable, but did not think that a sufficient case had been made out to justify the proposed enquiry. The question was accordingly negatived.

On April 9, 1869, a similar enquiry—concerning a jury panel in the county of Monaghan, which had been quashed on the ground that it had been partially and improperly arranged by the sheriff—was made in the House of Commons; but on a satisfactory reply being given by the Irish attorney-general, the matter was dropped.[i]

Treatment of prisoners.

On June 15, 1866, it was moved to resolve, that the treatment of prisoners in the Limerick gaol, under the Habeas Corpus Suspension (Ireland) Act, has been unnecessarily severe and unconstitutional; and that it is the duty of the government to prevent the continuance of the same. After explanations offered by the chief secretary for Ireland, which were deemed satisfactory by the House, the motion was withdrawn.[j]

Captain Coote.

On March 14, 1870, it was moved in the House of Commons to resolve, that, in the opinion of this House, the conduct of the government in the dismissal of Captain Coote from the shrievalty of the county of Monaghan, and the appointment of his successor, has been unconstitutional, and calculated to impede the due performance of

[h] Hans. D. pp. 413-435. [i] *Ib.* v. 195, p. 407.
[j] *Ib.* v 184, p. 494.

public duty. But after a long debate, the motion was negatived on division. Precedents.

On May 30, 1870, enquiry was made in the House of Commons in regard to the continuance for nine months of a vacancy in the office of Lord Justice of Appeal; the delay in filling up which was explained and justified by the attorney-general.[k]

On March 8, 1872, a debate arose in the House of Commons on a motion complaining of the appointment of a county-court judge in Wales, who was unable to speak Welsh. The motion was withdrawn. But on March 11, the House resolved that it was desirable that such judges should be able to speak and understand Welsh, whenever that language was generally spoken in their district. Subsequently, on June 26, 1874, a member again called the attention of the House to the practice of appointing to the office of county court judge persons unacquainted with the Welsh language. The home secretary undertook that this special qualification should be borne in mind, in future appointments.[l] Necessary qualifications.

On April 10, 1877, the House of Commons resolved, notwithstanding the opposition, on technical grounds, of the chancellor of the exchequer, to appoint a select committee to enquire and report upon the petition of the grandson and legatee of the late Lord Cochrane, afterwards Lord Dundonald, who in 1814 was dismissed from the royal navy upon his being found guilty of complicity in a fraud upon the Stock Exchange, for the purpose of raising money. His innocence of this charge being afterwards admitted, he was in 1832 reinstated in the rank in the navy which he would have held had he not been dismissed from the service. In 1847, the Order of the Bath was restored to him. The only reparation still due was the refunding of his half-pay from 1814 to 1832, which in justice to his memory, and to complete the gracious act of the sovereign in the restoration of this old veteran to his rank and honours, was now sought for.[m] The committee reported on July 16, reviewing the whole case, and declaring that it is deserving of her Majesty's most gracious and favourable consideration.[n] Lord Cochrane.

In 1881, two men, named Clows and Johnson, recently liberated on proof of unjust conviction, severally received 500*l.* compensation.[o]

In the administration of justice it is unavoidable but that erroneous convictions will sometimes occur, and that circumstances afterwards brought to light will Erroneous convictions.

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[k] Hans. D. v. 201, p. 1597.

[l] *Ib.* v. 220, p. 524. Com. Pap. 1874, v. 54, p. 495. Hans. D. v. 222, p. 1394.

[m] For the petition see Com. Pap. 1877, v. 68, p. 10.

[n] *Ib.* v. 10, p. 1.

[o] The Colonies, Feb. 10, 1882, p. 4.

prove that an innocent person has been unfortunately condemned. While the government are bound to afford every facility to enable one who has thus unjustly suffered to re-establish his innocence, the principle has never been acknowledged that such persons are entitled to claim pecuniary compensation, either from the government or from Parliament.[p]

Of Mr. W. H. Barber.

In 1858, however, a case occurred of extraordinary hardship. In the year 1843, Mr. W. H. Barber was convicted of forgery, and transported to Norfolk Island, where, it appears, he was subjected to peculiar indignities by the authorities. It was afterwards proved that he was wholly innocent of the charges brought against him, and he was released. He then petitioned the House of Commons, setting forth his sufferings, and soliciting redress. On June 15, 1858, with the consent of the crown, this petition was referred to a select committee, 'to consider and report whether any, and what steps should be taken in reference thereto.' The committee unanimously agreed that every allegation in the petition was true, and that Mr. Barber had endured incredible hardships and persecutions, which entitled him to the favourable consideration of the government. Whereupon a sum of 5,000*l.* was included in the estimates as a compensation to this gentleman. Shortly afterwards, a change of ministry ensued; but the new administration retained this item in the estimates, in deference to the judgment of their predecessors in office, and the money was voted by Parliament. This amount, however, did not satisfy Mr. Barber. He considered himself entitled to a further sum of 3,700*l.*, to indemnify him for his personal expenses in proving his innocence before the courts of law, and in regaining his original position. Accordingly, on June 11, 1861, the member who formerly introduced the matter to the notice of the House of Commons submitted another motion, to declare that the strong claims of Mr. Barber to the favourable consideration of the crown, referred to in the aforesaid report of the committee in 1858, have not been satisfied; and that the circumstances set forth in a recent petition from himself to the House of Commons are entitled to the consideration of the government. But the home secretary (Sir George Grey) opposed the motion, on the ground that Parliament was not bound

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[p] Case of J. Bell, Hans. D. v. 198, p. 1294. But see case of S. G. Merrett, *Ib.* v. 234, p. 1308. And in 1881, W. Galley, who forty years before had been convicted and transported for murder, of which it was afterwards proved that he was innocent, and in respect of which he had received the royal pardon, was granted 1,000*l.* as compensation. Lond. Guard. Sept. 21, 1881, p. 1315.

to award pecuniary compensation to persons who had been improperly convicted; and that it was only the exceptional circumstances of Mr. Barber's case which had induced the government to consent to the grant already made to him, and which was sufficient to cover every reasonable demand he had against the public. The question was accordingly negatived.[q]

Erroneous conviction of Mr. Bewicke.

On April 28, 1863, a petition was presented to the House of Commons by Mr. W. Bewicke, representing the loss and injury he had sustained in consequence of having been tried and convicted of firing a loaded pistol at four sheriff's officers, with intent to kill or do bodily harm, and sentenced to four years' imprisonment. His accusers were afterwards found guilty of having conspired falsely to charge Mr. Bewicke with the crime; whereupon he received the Queen's pardon. But meanwhile his property had become forfeited, as that of a felon, and had been sold by auction. The net produce of the sale was afterwards paid over to him, but Mr. Bewicke's loss on the property had been very considerable, and he had also been at great expense in prosecuting and bringing to justice his false accusers. He therefore prayed the House to grant him relief and compensation. On July 21, Mr. H. Berkeley moved, that in the opinion of the House, the grievances suffered by Mr. Bewicke are such as entitle him to the consideration of government. The home secretary (Sir George Grey) opposed the motion. He admitted that it was a case deserving of commiseration, but the law provided no means of indemnity, and it would be an injurious precedent to vote compensation from the public purse. On division, the motion was negatived by a majority of two.[r] On April 29, 1864, Mr. Berkeley moved for a committee to consider of an address to the Queen, praying her to direct adequate compensation to be made to Mr. Bewicke for his sufferings and losses, and declaring that the House would make good the same. The home secretary and attorney-general resisted the motion, but expressed the willingness of government to agree to the appointment of a select committee to enquire into the special circumstances of the case, and as to whether Mr. Bewicke sustained much loss by the sale of his property at auction. After a division, in favour of the main motion, a committee of enquiry into the allegations of the petition presented in 1863 was appointed. On June 17, the committee reported their opinion that Mr. Bewicke was not entitled to any compensation, having failed to prove that there had been a miscarriage of justice in his case, through the default of the persons charged with the administration of the law. They also declared their inability to accede to the proposition, that persons

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[q] Hans. D. v. 163, pp. 944-952. Law Mag. N. S. v. 13, p. 213.

[r] *Ib.* v. 172, p. 1175; and see Smith's Parl. Rem. 1863, p. 166.

who have been convicted in due course of law by evidence subsequently proved to be false are entitled to compensation out of the public purse. But in view of the loss sustained by the sale of his property, under forfeiture, they ventured to suggest, for the favourable consideration of the crown, whether the full value of such property at the time of forfeiture should not be restored to Mr. Bewicke, minus the net produce of the sale already paid over to him.[8]

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[8] Com. Pap. 1864, v. 5, p. 547.

CHAPTER XIII.

ROYAL PREROGATIVE IN GRANTING HONOURS AND REWARDS.

Perogative in granting honours.

THE next branch of the royal prerogative to which our attention will be directed is that which regards the sovereign as the fountain of honour.

Presuming that none can judge so well of the merits and services of the subjects of the realm as the crown itself, by whom they are governed or employed, the constitution has entrusted to the sovereign the sole power of conferring dignities, honours, and titular distinctions upon his people; in confidence that he will make use of the same in behalf of none but those who deserve distinction or reward.[a] But this prerogative, like every other function of royalty, is exercised upon the advice of responsible ministers.

It is a constitutional principle of great importance that all honours should be bestowed by the spontaneous action of the crown, and not necessarily at the instigation of ministers; such advice, however, may be tendered by way of suggestion to the sovereign through the prime minister.[b] No interference with this prerogative by either House of Parliament should ordinarily take place, for the obvious reason that, if it were understood that the goodwill and recommendation of Parlia-

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[a] Act 34 & 35 Vict. c. 53. Bowyer, Const. Law, p. 174. Petersdorff, New Abdt. v. 6, p. 535.

[b] Earl Grey, Hans. D. v. 192, p. 1813. Mr. Gladstone, *Ib.* v. 193, p. 1835. Mr. Disraeli, *Ib.* v. 223, p. 975. Martin, Life of P. Consort, v. 3, p. 478. Torrens, Life of Ld. Melbourne, v. 2, p. 169. Wellin. Desp. 3rd S. v. 7, pp. 180, 366.

ment was the road to honorary distinction, there would be an end to all true responsibility; and the favour of private members would be sought after instead of the approbation of the crown.[c]

On June 27, 1873, Earl Stanhope, in the House of Lords, moved an address to the Queen, praying her consideration to the institution of an order of merit to be conferred on persons of desert in science, literature, and art. The motion was opposed by ministers, on account of difficulties in giving practical effect to the idea, and negatived, without a division.

Advice of Parliament thereon.

Nevertheless, exceptional cases may arise, and have arisen, to justify the Houses of Parliament in approaching the sovereign with their advice and recommendations in regard to the exercise of this prerogative, and on behalf of meritorious public servants, whose claim to the favour of the crown had been either overlooked or disregarded.

Foreign orders, decorations, or medals cannot be accepted by British subjects without express licence from the crown. Such leave is never granted unless to reward active and distinguished service against an enemy, or actual employment in the service of the sovereign who confers the distinction, or attendance upon a foreign sovereign to convey to him an order from the British monarch. The rules governing the practice in such cases were established by Lord Castlereagh in 1812,[d] and were revised in 1870; they are strictly maintained, although they may not be legally enforceable.[e]

It is very undesirable that Parliament should interfere with the discretion of the crown in this particular; and if any representation were made by Parliament

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[c] Clode, Mil. Forc. v. 2, p. 327. Hans. D. v. 139, p. 1532.

[d] They will be found in Hertslet's Foreign Office List.

[e] Queen Victoria's letter to Emperor Napoleon, in Martin, Life of P. Consort, v. 3, p. 472. *Ib.* v. 5, pp. 392–394. Welln. Desp. 3rd S. v. 5, pp. 321, 406. Earl Derby, Hans. D. v. 229, p. 1265. L. Times, Nov. 9, 1878, p. 19.

thereon, it ought to be in general terms, so as to leave to the crown as much liberty as possible in dealing with the subject. At the same time opinions expressed by any considerable number of members of Parliament would go far to induce the proper minister to consider whether the rules applicable thereto could not be modified with advantage.[f] No rules have been laid down as to British subjects receiving *titles* from foreign sovereigns. It rests entirely with the crown whether the acceptance of such a title should be sanctioned or not.[g]

Precedents.

Thus, on June 3, 1845, Mr. Hume moved an address to the Queen, that she would be pleased to grant such a pension as she should think proper to the Right Hon. Sir Henry Pottinger, as a reward for his eminent public services, especially in China. The premier (Sir Robert Peel) deprecated the interference of the House in this matter, and said it was a question 'whether the House should make a precedent of a special grant, usurping the prerogative of the crown to reward public servants.' Considering, however, the peculiarly exceptional circumstances of the case, he stated that he would not oppose the motion, but would take upon himself to advise her Majesty to make a suitable provision for this distinguished man. Whereupon the resolution was agreed to, *nem. con.*[h]

And, in 1857, the government having been tardy in recognising the value of the public services of Sir John M'Neil and Colonel Tulloch, upon a commission of enquiry into the state of the army in the Crimea, and having tendered to them an inadequate reward, the House of Commons passed an address, 'praying that some especial mark of approbation might be conferred upon them' by the crown, in consideration of their able services on that occasion. The ministry yielded to the general wish of the House, did not oppose the address, and advised a favourable reply to it.[i]

On June 16, 1865, Mr. Hanbury Tracy called the attention of the House to the dissatisfaction prevailing in military circles, in regard to recent appointments to and promotions in the Order of the Bath, upon a motion for a copy of any regulations altering the con-

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[f] Mr. Gladstone, Hans. D. v. 208, pp. 1491, 1650, 1771. *Ib.* v. 214, p. 773.

[g] Earl Derby, *Ib.* v. 220, p. 1415.

[h] Hans. D. v. 80, pp. 1380, 1391, 1394. See also case of officers, &c. engaged in battle of Navarino; where the government were induced to allow them head-money, at the urgent appeal of the H. of C. Mir. Parl. 1834, pp. 2258, 2858. And case of those engaged in the Chinese war, which was successfully resisted by the government. Hans. D. v. 82, p. 681.

[i] Hans. D. v. 144, pp. 2246, 2396.

stitution of the order. After a short debate, and explanations from the prime minister on the subject, the motion was withdrawn.[j]

Speakers of House of Commons.

By constitutional usage, it is customary, in the case of Speakers of the House of Commons, on their final retirement from the chair, to address the crown to confer upon them 'some signal mark of royal favour.' This is responded to, on the part of the sovereign, by their elevation to the peerage, and by a message to the House of Commons recommending that pecuniary provision may be made for the support of the dignity.[k]

Peerages.

The creation of peers[l] is a peculiar and incommunicable privilege of the sovereign, over which Parliament has no control; saving that it must be exercised upon the advice of responsible ministers.[m]

In 1784, George III. declared to Mr. Pitt his positive intention to reserve the first rank in the peerage for his royal family.[n] This probably gave rise to the impression that the sovereign alone could create a dukedom, and that ministers never interfered therein; an impression which, it need scarcely be said, is both unconstitutional and unfounded.

In December 1711, by a stretch of the prerogative, twelve new peers were created at once, professedly for the purpose of overruling, or rather inverting, the majority in the Upper Chamber upon a great political question.[o] In 1832, a similar encroachment upon the independence of the House of Lords was attempted,

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[j] Hans. D. v. 180, p. 400; and see *Ib.* p. 748, in regard to the claims of certain troops in India to the Indian Mutiny medal *Ib.* v. 189, p. 171; v. 193, pp. 640, 667, 760.

[k] Rt. hon. C. M. Sutton, Mir. Parl. 1831-2, pp. 3467, 3486, 3502. Rt. hon. C. S. Lefevre, Hans. D. v. 144, pp. 2126, 2271, 2300.

[l] The process of making a peer, and the fees payable upon patents of dignities, as well as upon official appointments, generally, will be found in Com. Pap. 1867, v. 39, p. 425. In the case of peerages conferred for military or naval services, but not in the case of civil peerages, it is the rule for the expenses to be borne by the country. Hans. D. v. 210, p. 103. For procedure in contested claims to peerage, see a paper in Law Mag. v. 8, 4th s. p. 173.

[m] May, Const. Hist. v. 1, c. 5. Mir. Parl. 1839, p. 1705. Hans. D. v. 188, p. 1127. Hearn, Govt. Eng. pp. 415-436. Bagehot, Eng. Const. p. 288. In regard to the choice of candidates for this honour, see Wellu. Desp. Civil S. v. 6, p. 563.

[n] See *ante*, p. 282.

[o] Stanhope, Queen Anne, p. 507.

for the purpose of carrying the Reform Bill; but the crisis was happily averted by the prudence of the Opposition.[p]

Life peerages.

In 1856, the right of the crown to create peerages for life was, after investigation and debate, denied by the House of Lords. The question was raised in the case of Mr. Parke, an eminent lawyer, upon whom a life peerage, with the title of Baron Wensleydale, was conferred, for the avowed purpose of strengthening the appellate jurisdiction in the Upper House. It was not contended that the sovereign was debarred from conferring this description of honour upon any of her subjects, but merely that, in conformity to the usage and practice of the constitution, since it has been defined and settled in its best days—namely, from the revolution of 1688 downwards—neither the patent creating a life peerage nor the writ of summons issued in pursuance thereof entitled the grantee to sit and vote in Parliament.[q] This point having been decided by the House of Lords, after an examination of precedents, Lord Wensleydale, who, in February 1856, had been created a baron 'for and during the term of his natural life,' refrained from attempting to take a seat in that House. But on July 25 following, the Government, acquiescing in this decision, created him an hereditary peer.

Disqualified peers.

By an Act passed in 1871 for the preservation of the dignity and independence of Parliament, bankrupt peers are disqualified from sitting or voting in the House of Lords.[r]

Votes of thanks by Parliament.

The usage of Parliament also permits of the adoption, by either House, of resolutions of thanks to officers of the army or navy and others, who have rendered military service, for meritorious conduct in their official

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[p] See *ante*, p. 192.

[q] Rep. Com^e. of Privileges, agreed to by H. of L. Feb. 25, 1856. Hans. D. v. 140, pp. 203, 508, 591, 898, 1121, 1289.

[r] 34 & 35 Vict. c. 50.

Votes of thanks.

capacity. Votes of thanks 'should be proposed in both Houses, and with such a concurrence of opinion that there could be no doubt of their being unanimously passed.'[s] Various rules have been prescribed by precedent in respect to votes of this description. In the first place, it has been customary that all such motions should emanate from a member of the administration, acting on behalf of the crown, as the source and fountain of honour.[t] This rule has not been without exception, though it is worthy of notice that motions for votes of thanks which have proceeded from private members have rarely been successful.

For example, on June 20, 1794, Mr. Secretary Dundas having moved a vote of thanks to the officers and men engaged in the expedition to Corsica, Mr. Sheridan proposed an amendment to restrict the same to certain officers enumerated; but his amendment was rejected.[u] Again, on March 3, 1797, Mr. Keene moved an amendment to a proposed vote of thanks to Sir John Jervis, to substitute an address to the crown to confer some signal mark of royal favour upon Sir John; but he was compelled to withdraw it. On August 10, 1803, however, Mr. Sheridan moved a vote of thanks to the Volunteer and Yeomanry Corps, which was carried *nem. con.*[v] On February 14, 1828, Mr. Hobhouse proposed a vote of thanks to the officers engaged in the battle of Navarin; but the previous question being proposed thereon, he withdrew his motion.

It is contrary to the practice of Parliament to propose thanks to officers, by name, who are under the rank of general or commodore, or who are not in chief command in the action;[w] but 'the several officers, non-commissioned officers, and privates' engaged, are often thanked collectively.[x] After the suppression of the Indian mutiny, thanks were voted, collectively, to the gallant civilians, who had voluntarily performed mili-

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[s] Mr. Disraeli, Hans. D. v. 149, p. 252.

[t] Parl. Hist. v. 33, p. 3. Hans. D. v. 149, p. 255. *Ib.* v. 203, p. 725.

[u] Com. Jour. v. 49, p. 742.

[v] See also the proceedings on July 11, 1806.

[w] Peel, in Mir. Parl. 1841, p. 222. G. Hardy, Hans. D. v. 218, p. 428.

[x] See general indices, Com. Jour. Hans. D. v. 136, p. 324.

tary service on that occasion, with courage and self-devotion.[y] Thanks were also voted, on December 15, 1854, to 'General Canrobert and the French army, for their gallant and successful co-operation with her Majesty's land forces' in the Crimean campaign; and Field-Marshal Lord Raglan was desired to convey to them the resolution. Votes of thanks should be founded on official papers, announcing the completion of the service for which the thanks are to be given.[z] Votes of thanks.

It is usual to await the conclusion of operations before voting thanks in Parliament; and not to propose them after a brilliant exploit, which has left the operations or the victory incomplete.[a] And they are only voted for successes, and could not therefore be given to General Williams for his gallant defence of Kars, as that fortress was ultimately surrendered.[b]

It has not been customary to give the thanks of Parliament for victories, however brilliant, meritorious, or complete, unless they took place against a power with whom Great Britain was, at the time, in a state of formal recognised war.[c] Of late years, however, and especially in the case of military operations in India, this has not been insisted upon.[d] In proposing thanks for successes in India, it has been the uniform practice to confine the expression of the same to the military operations and arrangements, keeping out of view the question of the policy and origin of the war, for which the government are alone responsible.[e]

Votes of thanks are always confined to the survivors; there is no precedent of resolutions of approval being adopted in regard to the conduct of deceased officers, of whatsoever rank or merit.[f] In 1854, however, a general resolution of appreciation, sympathy, and condolence,

[y] Hans. D. v. 148, p. 827.
[z] *Ib.* v. 192, p. 925.
[a] Peel, Hans. D. v. 71, p. 553.
[b] Hans. D. v. 141, pp. 1847, 1878.
[c] Mir. Parl. 1828, p. 189.
[d] Hans. D. v. 72, pp. 542, 571.
[e] Mir. Parl. 1840, p. 801. Hans. D. v. 66, p. 206.
[f] Peel, in Hans. D. v. 84, p. 421.

Votes of thanks.

was adopted in reference to the heroes who fell in the Crimean campaign.[g]

If names intended to have been included in a vote of thanks are accidentally omitted, or if errors occur therein, they may be subsequently corrected, on motion to that effect.[h] Or, the order may be discharged, so as to admit of one more complete being adopted.[i]

In 1843, when it was proposed to include the name of Sir Henry Pottinger, plenipotentiary and envoy-extraordinary to China, in a vote of thanks for successful operations during the war with that country, Sir R. Peel said, 'there is no instance in which a diplomatic agent of the government has received the thanks of Parliament for the successful completion of any negotiation however important, or of any treaty however advantageous to the interests of the country;' adding, 'I think it of great importance to adhere in these matters strictly to precedents . . . . which, I think, have been founded upon good sense; otherwise, every omission that we happened to make in a vote of this nature would imply a censure.'[j] This principle was afterwards explained and enforced by Lord Palmerston, who said that 'Parliament seemed to have systematically avoided votes of thanks to negotiators, and most properly, because a negotiator was a person acting under the instructions of his government. The government had a majority in Parliament, and a vote of thanks to their negotiator was, in fact, a vote of thanks to themselves.'[k]

But, in the same year, Lord Brougham proposed in the House of Lords,[l] and Mr. Hume in the House of Commons,[m] a vote of thanks to Lord Ashburton, envoy-extraordinary to Washington, for the manner in which he had conducted the negotiations which

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[g] Hans. D. v. 136, p. 326.
[h] Mir. Parl. 1840, pp. 814, 1137. *Ib.* 1841, p. 499. Hans. D. v. 136, p. 424.
[i] Mir. Parl. 1840, pp. 1100, 1362.
[j] Hans. D. v. 66, pp. 572, 573.
[k] *Ib.* v. 68, p. 1237.
[l] *Ib.* p. 641.
[m] *Ib.* p. 1159.

Votes of thanks.

resulted in the Treaty of Washington. Sir Robert Peel, on the part of the government, acquiesced in this motion, viewing it as an exception to the general rule, on the distinct ground that such strong censure had been cast upon Lord Ashburton and the treaty, by leading public men, that it was due to his lordship to take the sense of Parliament upon his conduct. He said, moreover, that unprecedented as the proposed vote undoubtedly was, many precedents existed for insisting upon a distinct expression of opinion on the part of the House, in cases where, as in the present instance, a motion of condemnation had been made.[n] His views, however, as to 'the danger of establishing, or rather continuing such a precedent,' in other cases, remained unchanged.[o] The vote was agreed to in both Houses. It was acknowledged, in the House of Lords, by Lord Ashburton, from his seat in the House.[p]

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[n] Hans. D. v. 68, p. 1217.

[o] *Ib.* p. 1241. See also *Ib.* v. 80, p. 1387.

[p] On one occasion General De Lacy Evans, a member of the H. of C., in acknowledging the thanks of the House, from his seat, proceeded to comment at length, and with severity, upon errors in the speech of the mover of the vote of thanks, describing the services of the army. Hans. D. v. 136, p. 1265.

CHAPTER XIV.

ROYAL PREROGATIVE IN GRANTING CHARTERS.

Perogative in granting charters.

THE granting of charters to corporations, conferring upon them certain exclusive rights, privileges, and immunities, is also a matter of prerogative, and is exercised by order in council. In former times, this prerogative was of very wide extent, and implied an absolute legislative power on the part of the crown, by virtue whereof charters of liberties were granted to the people, both at home and abroad; which were all, more or less, in the nature of public laws. The growth and progress of our political institutions, however, have gradually restrained the authority of the crown in this particular within recognised limits, and now no charter conferring political power or franchise in Great Britain or her colonies can be granted by the crown, without the concurrence of Parliament.

Power to create corporations.

And the crown cannot create corporations with powers which transcend the law. Thus, it may not create a corporation to enjoy a monopoly, nor with power to tax the rest of the community. When a corporation is to be created with privileges of this description, the authority of the legislature must be invoked to supply the deficiencies of the royal prerogative.[a] The House of Commons in 1693 resolved 'that it is the right of all Englishmen to trade to the East Indies or any part of the world, unless prohibited by Act of

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Bowyer, Const. Law, p. 412.

Parliament.' This resolution destroyed the monopoly granted by royal charter to the East India Company; it has ever since been held that no power but that of the whole legislature can give to any person or to any society an exclusive privilege of trading to any part of the world.[b] The 'Statute of Monopolies,' passed in 21 James I. c. 3, put an end to a number of monopolies; but an exception was made therein of the prerogative right to grant certain exclusive rights, or letters patent, to inventions of new manufactures. But in 1852 the exercise of this prerogative came to be wholly regulated by Act of Parliament.[c]

Chartered rights to universities.

It is customary in the colonies, possessing representative institutions, for Acts to be passed by the local legislatures, constituting and incorporating colleges and universities therein. It has heretofore been deemed to be necessary to invoke the exercise of the royal prerogative for the grant of letters patent to such institutions, for the purpose of enabling them to confer degrees, which shall be recognised as equivalent to degrees granted by universities in the mother country. In the grant of such powers the crown will exercise discretion to ensure that no degrees shall be sanctioned other than those conferred by similar institutions, and particularly by the great English universities, on which these new institutions are professedly modelled, in order that uniformity in procedure might exist among universities having the sanction of royal letters patent.[d]

But, by an Act passed in Victoria in 1881, the University of Melbourne was empowered to confer 'any degree, diploma, certifi-

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[b] Macaulay, Hist. of Eng. v. 4, p. 475. Forsyth, Const. Law, p. 434. Am. Law Rev. v. 7, p. 737.

[c] Hans. D. v. 222, p. 245.

[d] Earl of Carnarvon's Desp. to Gov. Normanby of N. Zealand, dated Jan. 22, 1875. Canada Acts of 1843 and 1852. Quebec Stat. 1870, for Bishop's College, Lennoxville.

cate or license, which can now be conferred by any university in the British dominions.'

Queen's College University.

In 1839-40, the Upper Canada Parliament passed an Act to establish 'the university at Kingston.' This Act was assented to, but afterwards disallowed, and a royal charter issued instead, incorporating 'Queen's College' at Kingston. The law officers of the crown were of opinion that it belongs to the crown by its prerogative to incorporate a college or establish a university. And in order to secure the royal name to such an institution, certain forms must be observed, which appropriately should be gone through at the seat of royalty. The Act was considered an objectionable precedent, and as disabling the crown to meet the wishes of the trustees. It was therefore disallowed.[e]

Melbourne University.

The Melbourne (Victoria) university was established under a colonial statute, which received the royal assent on January 22, 1853.[f]

The University of the Cape of Good Hope was incorporated by local Act of 1873; but it received a grant of royal letters patent on August 8, 1877.

Laval University.

In 1881, an Act respecting Laval University was passed by the Quebec Legislature.[g] It was nevertheless protested against, and its disallowance asked for by certain members, as *ultra vires* of a provincial legislature.[h] It merely empowered the university 'to increase the number of its chairs of arts and other faculties, within the limits of the province of Quebec.' The imperial government refused to interfere as it was a local question, to be disposed of by the governor-general in Council. And the Dominion Government decided, under the British North America Act of 1867, § 93, the question was in the exclusive jurisdiction of the provincial legislature.

Adelaide University.

The university of Adelaide, in South Australia, was incorporated by local statute, and power to confer degrees granted by letters patent, from the crown. Subsequently the university applied for permission to confer degrees on women, and also degrees in science (Bachelor, and Doctor of Science). At first the secretary of state for the colonies refused to advise her Majesty to recognise these degrees. But, after obtaining the sanction of the local legislature, the colonial secretary was requested in 1879 to reconsider his refusal. He agreed to do so, and to advise the issue of the necessary letters patent, provided a local Act was first passed, giving

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[e] Toronto British Colonist, Dec. 29, 1841, p. 3.

[f] See Rep. on Colonies for 1879. Com. Pap. 1881, v. 64, p. 1.

[g] Quebec Acts 44-45 Vict. c. 40.

[h] See reasons in Leg. Com. Jour. 1881, pp. 135-139.

power to the university to confer these degrees. This was accordingly done in 1880. Whereupon the royal charter was granted, which not only recognised degrees in science, but also authorised the conferring of degrees on women.[i]

In 1870, an Act was passed founding a university in New Zealand, to which a charter was subsequently granted by the Queen. The Act was amended in 1874, and letters patent of a late date gave rank and precedence to degrees conferred by this university, equal to that of degrees granted in the imperial universities.[j]

New Zealand University.

By an Act passed in 1871, it is provided that a copy of any application for the foundation of any college or university, which may hereafter be referred for the consideration and report of any committee of the Privy Council, shall, together *with a draft* of the proposed charter, be laid before both Houses of Parliament for not less than thirty days before any report thereon shall be submitted to the crown.[k]

Procedure in founding a college, or

Corporations for local and municipal purposes must be created in the mode prescribed by law for the exercise of that portion of the royal prerogative, and with the incidents legally essential to their nature.[l] For example, her Majesty has been expressly empowered by statute, on petition of the inhabitant householders, to grant, with the advice of her Privy Council, a charter of incorporation, according to the provisions of the Municipal Corporation Act, to any town or district, and to create the same a municipal borough.[m]

Creating a corporation.

The crown is also at liberty to give royal charters to private associations, a prerogative which is exercised upon the advice of the Board of Trade; but this practice has long been regarded as of doubtful propriety. One of the objects of the Companies Act of 1862 was

Royal charters.

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[i] S. Aust. Parl. Proc. 1881, App. No. 37. *Ib.* 1882, App. 37.

[j] Rusden, Hist N. Zealand, v. 3, p. 52. By London Gaz. Dec. 11, 1883, this University was empowered by Supp'. Letters Patent to grant degrees of Bachelor and Doctor in Science. *Colonies*, Dec. 14, p. 11.

[k] 34 & 35 Vict. c. 63. Hans. D. v. 220, p. 1348; v. 221, pp. 762, 1373.

[l] See stat. cited in Bowyer, Const. Law. Hans. D. v. 189, p. 597.

[m] Bowyer, Const. Law, p. 399, *n.* New Municipal Corp. Act, 1882, pt. xi.

to substitute a general law for an exceptional privilege.[n]

Charters and corporations.

The crown has ever exercised, and still retains, the prerogative of incorporating universities, colleges, companies, and other public bodies, and of granting to them, by charter, powers and privileges not inconsistent with the law of the land, while, at the same time, similar powers are now conferred by Act of Parliament.[o] But public associations for commercial purposes ordinarily require powers which can only be conferred by legislation. Even long-established institutions, such as the Bank of England, which were originally created by royal charter, have of late years derived their extraordinary privileges, like other public companies, from legislative enactments.[p]

All charters or grants of the crown may be repealed or revoked when they are contrary to law, or uncertain or injurious to the rights and interests of third persons; and the appropriate process for the purpose is by writ of *scire facias*. To every crown grant there is annexed by the common law an implied condition that it may be repealed by *scire facias* by the crown, or by a subject grieved, using the prerogative of the crown upon the fiat of the attorney-general.[q]

Private Corporations.

Moreover, all private corporations are subject to the control of the law, and may be proceeded against for illegal acts or abuse of powers, either by a special action on the case, or by writ of mandamus or of *quo warranto*, according to the nature of the alleged offence or misdemeanour. Where the legal remedy against a corporation is inadequate a court of equity will inter-

[n] Hans. D. v. 189, p. 851. But the abstract right of issuing such charters still remains in the crown. *Ib.* v. 196, p. 356.

[o] See proceedings in H. of C. in reference to granting of a royal charter to the Univ. of London. Mir. Parl. 1833, pp. 1842, 2740. In 1869 the royal charter granted in 1836 to Univ. College, London, was annulled, and the Univ. incorporated by 32 & 33 Vict. c. 23.

[p] Amos, Fifty Years Eng. Const. p. 126.

[q] Forsyth, Const. Law, p. 387.

fere and restrain unlawful proceedings by the issue of an injunction.[r]

Power of Parliament to dissolve a corporation.

While a corporation may be dissolved by a forfeiture of its charter by ordinary legal process, Parliament itself may also interfere, and by an Act of its own put an end to the existence of a body which has misused or abused the powers entrusted to it. [It is a principle of American law that the charter of a private corporation, whether civil or eleemosynary, is an executed contract between the government and the corporators, and that the legislature cannot repeal, impair, or alter it, against the consent or without the default of the corporation judicially ascertained and declared.[s]] Under the British constitution, Parliament is omnipotent, and may at any time dissolve a corporation created by the crown or by Act of Parliament. But such is the respect which is shown by British law to private property and private rights that there have been very few instances, and those mainly determined upon grounds of public policy, wherein Parliament has thought proper to dissolve any corporate body, or to interfere without their consent with the exercise of powers originally conferred upon them. As a rule, it is left to the courts of law to regulate and restrain the proceedings of all corporations within the limits of their original charters.[t]

Precedents.

On March 18, 1862, a petition was presented to the House of Commons, charging the directors of the West Hartlepool Railway and Dock Company with having made certain fraudulent statements of accounts, and with having borrowed money largely in excess of the powers conferred upon them by Parliament. On March 25 it was moved to appoint a committee to enquire into the truth of these charges; but as they were about to be investigated

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[r] Angell and Ames, Corporations, c. 11, 20, 21.

[s] *Ib.* § 767. Green, Am. ed. of Brice, *Ultra Vires*, ed. 1880, p. 96, *n.* Abbott, Corporations, 1869, *verbe* 'Legislation.'

[t] Angell and Ames, Corporations, §§ 766, 767. Brice, *Ultra Vires*, ed. 1880, p. 786. Dwarris on Statutes, 2nd ed. p. 650. Hans. D. v. 198, pp. 1127–1134, 1338. Am. L Rev. v. 8, pp. 222–229.

Precedents.

by a court of law, ministers opposed the motion, and it was accordingly negatived.[u]

Next session (1863) the company applied to Parliament for further powers. On June 1, the select committee, to whom their Bill was referred by the House of Lords, made a special report that it was not expedient to proceed further with the Bill, inasmuch as it appears the directors 'have for a series of years wilfully contravened the provisions of the Acts of Parliament relating to the said company, by largely exceeding the limits of their borrowing powers, and by the application of the company's funds to purposes other than those of the undertaking, and have concealed their illegal acts from the shareholders and creditors of the company, and from the public, by the continued and systematic publication of false accounts.' The committee further recommended that a searching enquiry should be made into the facts of the case, and if the parties concerned should prove to have been guilty of the alleged offences, 'that the authority of the House should be exercised to ensure their prosecution and punishment.' They were also of opinion 'that it would be expedient to devise further legislative measures to restrain boards of directors within the legal limits of their Acts of Parliament, and for the protection of the interests of innocent creditors and shareholders.'[v]

On June 23 the chairman of the above-mentioned committee (the Earl of Donoughmore) moved that the report and evidence be referred to the attorney-general, with directions to enquire into the alleged illegal conduct of the late directors and auditors of the said company, and to institute a prosecution against such persons as might be justifiably accused of illegality or fraud. But the lord chancellor stated that the government held it to be their duty to make immediate enquiry into the alleged frauds; and if it appeared that an indictment could be sustained, would themselves institute a prosecution. Whereupon the motion was withdrawn.[w] On February 26, 1864, the lord chancellor, in reply to a question from Lord Donoughmore, informed the House that, after full enquiry, the attorney-general had advised that no prosecution should be undertaken against the parties complained of, as he did not think a conviction could be obtained.[x]

So much of the report of the committee aforesaid as related to further legislative measures to restrain unlawful acts by railway directors was endorsed by the House of Lords, by the appointment, on June 23, 1863 (on motion of Lord Donoughmore), of a select committee to consider what measures might be necessary to restrain directors of railway companies from exceeding their borrowing

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[u] Hans. D. v. 166, pp. 107–110.
[v] Lords' Pap. 1863, v. 34, p. 463.
[w] Hans. D. v. 171, pp. 1294–1302.
[x] *Ib.* v. 173, p. 1179.

powers, and from an unauthorised use of their funds, and to enquire into the means of affording additional security to the holders of debentures. The West Hartlepool Harbour and Railway Bill was referred to this committee, to consider whether it should be allowed to proceed, for the benefit of the innocent shareholders, and without exempting the guilty parties from their responsibility.[y] On June 30, the committee reported in favour of the Bill, with certain amendments. It accordingly became law.[z] On July 21, the committee reported the evidence they had taken, together with various recommendations.[a] In the following session (1864) the committee was reappointed. They reported on July 15 several recommendations for the prevention of frauds by railway companies;[b] which led to the passing of a general Act, making new regulations and restrictions in regard to the borrowing of money by railway companies, in excess of the amount allowed by their Acts of Incorporation.[c]

Precedents.

In 1863 the unexpired charters of four Canadian banks, incorporated by private Acts of the provincial Parliament, but which had become insolvent, and had discontinued banking operations, were repealed by a public Act. In a previous session, a committee of enquiry into the condition of these banks had reported that it was 'advisable to prevent their resumption of business on the terms and conditions embodied in their several charters.'[d]

The solicitation of a Bill in Parliament has been regarded, by courts of equity, as so similar to that of an ordinary suit, that in one instance the promoters have been restrained by injunction from proceeding with a Bill, the object of which was held to be to set aside a covenant; and though this injunction was afterwards set aside, on appeal, the lord chancellor held that in a proper case the court would not hesitate to issue an injunction 'touching proceedings in Parliament for a private Bill, or a Bill respecting property.' It is erroneous to suppose that this would be an infringement upon the privileges of Parliament, for the Court of Chancery 'acts upon the person, and not upon the jurisdiction.'

In fact the Irish Court of Chancery, in 1873, by a decision which was afterwards confirmed, upon appeal, did issue an injunction to restrain the corporation of the township of Kingstown from proceeding any further with a Bill for extending the boundary of the township and improving its economic and sanitary arrangements, which Bill had been read a second time in the House of Commons

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[y] Hans. D. v. 171, pp. 1302-1305.
[z] 26 & 27 Vict. c. 154.
[a] Lords' Pap. 1863, v. 34, p. 215.
[b] *Ib.* 1864, v. 27, p 29.
[c] 27 & 28 Vict. c. 120, § 23.
[d] Canada Leg. Ass^y. Jour. 1862, pp. 145, 228, 268. App^x. No. 4. *Ib.* 2nd Sess. 1863, p. 109. 27 Vict. c. 45.

Precedents.

and referred to a select committee. The ground of this decision was that the corporation had not complied with certain provisions of 'The Towns' Improvement Clauses Act, 1847,' and the effect was, that the corporation were restrained from prosecuting the Bill, in their corporate capacity; while, as private individuals, they remained free to act on their own responsibility, and at their own expense.[e] The judgment was delivered on May 5, and on May 7 the select committee reported to the House of Commons that the preamble of the Bill had not been proved to their satisfaction.[f]

It may indeed be very difficult to conceive a proper case for the interference of a court; inasmuch as the ordinary province of Parliament in private Bills is to abrogate existing rights, and to create new ones. An injunction, therefore, could not be granted on the ground that the Act applied for would interfere with existing rights. For Parliament has the power of destroying, altering, or affecting pre-existing rights, providing, as it always does, or intends to do, compensation to the party affected.[g] But parties have been restrained, by an injunction, from appearing as petitioners against a private Bill pending in the House of Lords,[h] and the Lords, upon complaint thereof made, have declined to interfere, on the ground that 'the matter lay entirely between the parties themselves, and did not in any manner affect their lordships' power of legislation.'[i]

By the Imperial Act, 38 & 39 Vict. c. 64, the Guarantee by Companies Act of 1867 is repealed, and every certificate granted by the Treasury to a company under that Act is cancelled; existing rights and remedies being saved.

Corporate vested rights in United States.

Much practical difficulty has been experienced in the United States from the immunity from legislative control enjoyed by so many corporations throughout the country since the decision in the case of the trustees of Dartmouth College *v.* Woodward, in 1819.[j]

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[e] Irish Eq. L. R. v. 7, p. 395.

[f] For further particulars see Brice, *Ultra Vires*, ed. 1877, p. 412, *n.*

[g] Heathcote *v.* North Staffordshire Rly. Co. 6 Railway and Canal Cases, pp. 359, 368. 2 Mac. & G. p. 100. White & Tudor, Lead. Cas. Am. ed. 1876, v. 2, p. 1324. See 35 & 36 Vict. c. 95, directing that certain legal proceedings pending in a matter where in Parl. had legislated, and might hereafter legislate, should be stayed for a time.

[h] Stockton and Hartlepool Rly. Co. 5 Railway and Canal Cases, p. 691.

[i] Hans. D. v. 100, p. 784. May, Parl. Prac. ed. 1883, p. 757. For later cases, Brice, *Ultra Vires*, ed. 1877, pt. 3, c. x.

[j] 4 Wheaton, p. 518.

As a result, it has generally become customary to insert into the statute law of the States, as a part of the organic law of all subsequently granted corporate charters, a reserved legislative power of amendment or repeal; thereby re-establishing over such bodies, as a condition precedent of their existence, the old common law principle of parliamentary omnipotence.[k] Similar power is reserved in Canada, by the Interpretation Act of 1867, clause 7, § 34; by the General Railway Act of 1868, clause 22; and by the Joint Stock Companies Act of 1869, clause 43.

Precedents.

The decision of the Supreme Court, in the Dartmouth College case, was professedly based upon the fact that the United States possess a written constitution, binding alike upon Congress and upon the state legislatures; and that 'the will of the people, as declared in the constitution, is the first law.'[l] It is assumed to be the duty of the Supreme Court to construe that constitution, and to declare whether any impugned law is in conformity with it. The tenth section of the United States Constitution declares any law to be unconstitutional which impairs the validity of a contract. Under this clause the doctrine embodied in the Dartmouth College case was enunciated. By degrees this doctrine was made to cover grants to railway companies and industrial corporations, which had been thoughtlessly and improvidently granted; and monopolies, injuriously affecting the whole community, came to be regarded as vested rights.[m]

In 1852 (by Act 16 Vict. c. 39) the charters granted in 1851 to the Montreal and Kingston, and to the Kingston and Toronto Railway Companies, were severally repealed, in order that leave might be given to a grand trunk company to construct the whole line from Toronto to Montreal. This proceeding of the legislature was protested against and resisted, at first, by the Montreal and Kingston Railway Company; but finally, as is expressed in the above statute, they 'expressed their willingness' to the abrogation of their charter, provided the expenses they had already incurred were repaid.[n]

In 1861, the Canadian Legislature (on complaint of parties interested) determined to annul certain rights granted by local Acts to

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[k] Am. L. Rev. v. 1. pp. 451–476. But see *Ib.* v. 8, p. 189. Proffatt on Private Corporations, pp. 17-34.

[l] Cooley, Const. Limit. p. 4. Sedgwick, Construc. Stat. p. 125.

[m] Cont. Rev. v. 28, p. 689.

[n] Canada Leg. Ass^y. Jour. 1852–3. App. xx.

the owners of certain toll bridges over the Rivière des Prairies, but in so doing a select committee of the legislative council on the Bill recommended that compensation should be given by the government to the said owners.[o] Pursuant to this recommendation, the Board of Works awarded indemnity to the bridge proprietors.[p]

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[o] Canada Leg. Council Jour. 1852-3. [p] Can. Ssse. Pap. 1862, No. 25.

CHAPTER XV.

ROYAL PREROGATIVE IN REGARD TO OFFICES AND PUBLIC OFFICERS.

Prerogative in regard to offices and public officers.

THE crown, besides being the fountain of dignity and honours, is likewise entrusted by the constitution with the sole power of creating such offices, for carrying on the public service, or maintaining the dignity of the state, as may be required. It has also, by virtue of the prerogative, a right to make choice of all persons to be appointed to fill places of trust and emolument under the crown;[a] to determine the amount of remuneration to which they shall be respectively entitled; and to dismiss them from office, according to its discretion.

Every office and employment in the public service derives its authority either directly or indirectly from the crown; and in the eye of the law is accounted honourable, because implying a superiority of abilities; and being always presumed to be filled by the person best qualified for the same. Offices are in the gift of the crown, because the law supposes that no one can be so good a judge of the merits and qualifications of public officers as the sovereign by whom they are employed.[b]

As the king may create new titles, so may he create new offices, but with this restriction, that he cannot create new offices with new fees annexed to them, nor annex new fees to old offices; for this would be a tax

[a] Macaulay, Hist. of Eng. v. 4, p. 303.

[b] Bowyer, Const. Law, p. 147.

upon the people, which cannot be imposed but by Act of Parliament.[c] Neither may the crown grant ancient offices in other manner and form than has been usual, unless with consent of Parliament;[d] nor create an office that is inconsistent with the constitution, or prejudicial to the subject, though without fees.[e] Neither can a judicial office be granted for a term of years, or in reversion. Ministerial offices, however, are not subject to this rule.[f] With these limitations it is competent to the crown to create a new office, or department of the executive government, whenever the exigencies of the public service may require it; and to determine the rate of salary to be affixed thereto.[g] The statutes 50 Geo. III. c. 117, and 56 Geo. III. c. 46, were the Acts by which the civil service of the crown was for the first time formally recognised, and constituted upon a parliamentary basis.[h]

In cases which admit of delay it is customary to obtain the previous sanction of Parliament to the erection of new offices; and it is sometimes provided, that the appointment of individuals to a new office created by statute shall be deemed to be temporary only until the salary of such office has been granted by Parliament.[i]

Abuse of patronage.

In former times, and even so recently as the reign of George I I., the patronage of the crown was oftentimes shamefully abused. Persons were appointed to places of trust and emolument, or removed therefrom, on mere political grounds, and in furtherance of political in-

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[c] 2 Coke, Inst. 533. Com. Dig. Prerog. D. 3.

[d] Chitty, Prerog. p. 81.

[e] *Ib.* p. 81. Bowyer, Const. Law, p. 175.

[f] Com. Dig. *Officer*, B. 7.

[g] Hans. D. v. 190, p. 986; v. 227, p. 506; *post*, v. 2.

[h] West. Rev. v. 49, p. 464.

[i] 33 & 34 Vict. c. 17; 34 & 35 Vict. c. 70, § 3. And see debates on proposed additional judge in Chancery, Mir. Parl. 1830, pp. 2269, 2426, 2560; and on objection raised in Com^e. of Supply to an apptmt. of a certain person as Inspect.-Gen. of Marines, *Ib.* 1830-31, pp. 493, 495, 1098. Mr. Gladstone's remarks on the proposed creation of a new office to draft Government Bills, Hans. D. v. 185, p. 1236.

trigues. Even persons holding non-political offices, such as lord-lieutenants of counties, or having commissions in the army and navy, were not unfrequently dismissed by order of the king, for votes given in Parliament.[j]

Public offices.

On March 6, 1780, a debate arose in the House of Lords for an address to the king, to be informed 'by whose advice the Marquis of Carmarthen and the Earl of Pembroke had been dismissed from the office of lord-lieutenant, by reason of their conduct in Parliament.' The motion was opposed by the ministry, as intrenching upon the king's prerogative of choosing his own servants, and was negatived. And see the case of Earl Fitzwilliam, who was removed from the lord-lieutenancy of Yorkshire, for taking part in the proceedings of a political meeting against the government, at a time of great political excitement.[k]

Sinecure offices, gifts of places in reversion, and secret pensions for political services to the court were multiplied; and the illegitimate influence of the crown was thereby greatly increased. But chiefly through the patriotic labours of Edmund Burke, in the cause of economic reform, these evils were exposed and remedied. Acts of Parliament were passed in the early part of the reign of George III. to abolish sinecures, to regulate the grant of offices, and to reform abuses connected therewith. Since the commencement of the present century, a marked improvement has taken place in the practice of governments, and in the tone of public opinion, respecting the distribution of patronage. No minister would now venture to incur the responsibility of abusing the prerogative, in the choice and dismissal of servants of the crown, by such acts as were committed with impunity less than a century ago. Public opinion has gradually brought the exercise of these powers of administration under the control of certain rules, which, though for the most part enforced by no written law, are yet practically acknowledged

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[j] May, Const. Hist. v. 1, pp. 24, 29, 40; Ewald, Life of Walpole, p. 247.
[k] Lewis, Administrations, p. 397.

by the government, and have put an end to many abuses.[l]

Political and non-political officers.

The most important rule of modern times, in regard to the civil servants of the crown, is that whereby they have been divided into two classes—political and non-political, of which the former is supreme and the latter subordinate. The former consists of cabinet ministers and other members of the administration, and the latter of the permanent members of the civil service.[m] The principle upon which this division is made, is that certain officers have duties to perform that are of a decidedly political character, or are otherwise so intimately connected with the person of the sovereign as to afford peculiar facilities for influencing the royal mind. All such functionaries, as a general rule, have seats in one or other of the Houses of Parliament, and are required to co-operate with each other in furthering the policy of the government. And they necessarily relinquish their offices upon a change of ministry.[n]

Non-political officers.

The non-political civil servants of the crown may be considered as virtually ineligible to a seat in Parliament.[o] They have been, for the most part, excluded from the House of Commons by express statutes;[p] but even where there is no positive prohibition, the fact of a person holding a permanent official appointment under the crown operates as an indirect disqualification for political life, inasmuch as every successive ministry in England is formed upon party principles, and 'no administration could act with colleagues who were members of the House, unless they were willing to act as

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[l] Grey, Parl. Govt. new ed. 285.

[m] Upon this principle a parliamentary under-secy. takes precedence, in rank and responsibility, over a permanent under-secy., however dependent the former may be upon the latter in his first appointment for guidance and information. Rep. Com^e. on Diplomatic Service, Com. P. 1871, v. 7, pp. 295, 339.

[n] See further on these points, v. 2, c. 'On the Cabinet Council.'

[o] See Com. Pap. 1854 5, v. 20, p. 400.

[p] See v 2.

members of the same party.'[q] Their exclusion from the political arena is the price they pay for their tenure of office, being virtually that of good behaviour. For whether they were originally appointed for political reasons, or otherwise, nevertheless, 'as a general rule, the civil servants who do not sit in Parliament, hold their offices technically and legally during the pleasure of the crown, but are in practice considered as having a right to remain in undisturbed possession of them, so long as they continue to discharge their functions properly. This principle is so universally recognised, that the dismissal of a person holding a permanent office is never heard of now, except for misconduct.'[r]

Principle of permanence in the civil service.

'The distinct line drawn between permanent and political offices, together with the complete establishment of the practice of regarding the former as held during good behaviour, has diminished the evils incidental to changes of administration.' 'By allowing these transfers to affect only a comparatively small number of high offices, and by retaining the great majority of the public servants permanently in their situations, the experience and traditional knowledge they possess of the business of the several departments of the state are rendered still available for the conduct of affairs.'[s]

American system.

Contrast this picture with the results of the system which now prevails in the United States of America, where thousands of offices are periodically transferred from the adherents of one party to those of another, upon the accession of every new president! This practice is contrary to the original principles of the American Constitution, which provided for a permanent executive system, independent alike of political interference, and of legislative control. It is contrary, likewise, to the practice of their government from the days of Washington to those of President Jackson. Since then, however, the right of appointments to office has been gradually absorbed by the Senate and House of Representatives, and is now

[q] Rept. Board of Admiralty, Com. Pap. 1861, v. 5.

[r] Grey, Parl. Govt. new ed. p. 287; Com. Pap. 1854-5, v. 20, p. 193.

[s] Grey, pp. 288, 289; Hearn, Govt of Eng. p. 239.

wholly controlled by those bodies, irrespective of the opinions of the president. As a natural consequence, the permanence, dignity, purity, and efficiency of the civil service have been completely overthrown, and the entire community most injuriously affected by the corrupt use of patronage for political purposes. The existing practice of rotation in office exercises moreover a most pernicious influence upon the *employés* themselves by diminishing the sense of personal responsibility, and by fostering a careless indifference to the obligations of office, whilst its emoluments are greedily sought for, and too often fraudently increased. It has deprived the state of the services of men of character and qualifications, hindered the progress of departmental improvement, and compelled every successive batch of *employés* to acquire the merest rudiments of official routine, when they should be profiting by the traditions and experience of office to bring their several departments into the highest possible condition of efficiency. The demoralising effects of this system upon the public welfare are beginning to attract serious attention. A partial reform of the civil service was sanctioned by an Act of Congress in 1871, upon the recommendation of President Grant, and a commission was appointed which reported in 1874 in favour of steps to give effect to the reforms already initiated; but Congress has not hitherto sustained the efforts which have been made by the president in this direction.[t] Meanwhile some of the ablest and most respectable organs of public opinion in America have announced that a vital change in this particular has become essential to the maintenance of their republican institutions. One writer, after pointing out the nature and extent of the existing evil, urges the necessity of adopting the usage of Great Britain in regard to office-holders, declaring that 'we must have a general rule for the selection of *employés*; their tenure of office must be made dependent on their good behaviour; there must be promotion as a reward for fidelity and ability, and pensions as a refuge for old age. In other words, some inducement must be held out to honest and competent men to enter the public service, to remain in it, and behave well in it.'[u] This is a striking testimony to the superior advantages of the British system.

Evils of the American system, of frequent change of *employés*.

In 1877, President Hayes instituted enquiries into the working of the system in Great Britain, without waiting for further congressional action. This led to the preparation and publication, in

[t] President's Message, April 15, 1874, forwarding Report of Civil Service Commission. Senate Docts. 1873 4, No. 53. See Am. Law Rev. v. 11, p. 197; North Am. Rev. v. 127, p. 273.

[u] North Am. Rev. v. 101, pp. 122–124. *Ib.* v. 109, pp. 443-475; v. 124, p. 16; Am. Law Rev. v. 6, p. 159. See also in regard to working of American political system and its notorious inferiority to that of Gt. Britain, North Am. Rev. v. 118, p. 1; Quar. Rev. v. 127, p. 61.

1880, of a report by Mr. D. B. Eaton, which affords a comprehensive history of the whole subject of civil service reform in England.

Appointments to office.

The principle which regulates the choice of persons to fill political offices under the British crown will be explained in another part of this treatise.[v] It is here material to notice that, although appointments to office under the crown are made in the name of the sovereign, it is contrary to the spirit of the constitution for any such appointments to be made except through a responsible minister, and after consultation and agreement with the prime minister.[w] The complete and unreserved recognition of this principle is of recent date. George III. was fond of the exercise of private patronage and disregarded, sometimes, the restraint of constitutional rules.[x] His son and successor, George IV., was of a similar disposition in this respect. In 1829 he directed the military authorities to issue patents conferring two military appointments, without having previously taken the advice of the prime minister (Duke of Wellington) thereon. The home secretary (Mr. Peel) demurred to this transaction; and agreed with the premier that, had the appointments been to political or ecclesiastical offices a stronger remonstrance would have been advisable. But in consideration of the king's health, and the unobjectionable selection of persons made by his Majesty to fill these vacancies, they contented themselves with recording, in an official memorandum, their sanction to the appointments. But, in the event of the recurrence of a similar proceeding, it was agreed that the king should be informed that the secretary of state ought not to forward instruments conferring appointments to his Majesty for his signature, without previously communicating with the first lord of the Treasury, and ascertaining that he is acting with his sanction and consent.[y]

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[v] See v. 2.

[w] See *ante*, p. 271.

[x] *Ib.* p. 281.

[y] Wellington, Desp. Civil Series, v. 6, pp. 162, 166, 181. Another case, *Ib.* p. 300.

But from and after the complete establishment of the principle of open competitive examinations for the selection of candidates to fill up vacancies in the civil service of the crown in the United Kingdom, which dates from the year 1870—political patronage has been entirely abandoned, and there has been a complete surrender of the power formerly exercised by members of Parliament over appointments to office.[z]

Appointments to permanent offices.

In selecting individuals to fill subordinate places of honour and emolument, a great responsibility devolves upon the existing administration. Public opinion will no longer tolerate the prostitution of offices for political services that so often disgraced our history in former times. It is now an admitted necessity, that every one appointed to an office of trust, however small, should be qualified for his post, otherwise the choice will bring discredit upon the government, and may lead to the withdrawal of public confidence and parliamentary support from those who are accountable for the same. But so long as this principle is not lost sight of, it is acknowledged to be the privilege of an administration to give the preference, in appointments to office, to their political friends and supporters; for among the powers that are required to enable a government to perform its functions with efficiency, there are few more essential than that of reward.[a] 'The patronage of the crown,' says May,[b] 'has ever been used to promote the interests and consolidate the strength of that party in which its distribution happened to be vested.' It is true that the offer of places, as a corrupt inducement to vote at elections, has long been recognised by the legislature as an insidious form of bribery.[c] But while carefully avoiding the committal of any offence against the law,

Political patronage.

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[z] Eaton, Civil Service, pp. 310, 431.

[a] Grey, Parl. Govt. p. 311; Rowland's Eng. Const. p. 437.

[b] May, Const. Hist. v. 2, p. 91.

[c] 2 Geo. II. c. 24; 49 Geo. III. c. 118, &c.; Rogers on Elections, 316 347.

the patronage of the crown within certain limits—to be presently noticed—has been systematically, though not invariably, distributed by the ministry of the day, 'as a means of rewarding past political service, and of ensuring future support.' Patronage.

It is worthy of remark that the Earl of Shelburne (formerly prime minister), a stanch Whig, accepted the Marquisate of Lansdowne from the hands of Mr. Pitt; continuing in Opposition, notwithstanding; though he took but little part in politics after his retirement from office.[d] And in November 1858, during the Derby administration, the Right Hon. W. E. Gladstone, M.P., was appointed lord high commissioner extraordinary to the Ionian Islands, from a sense of his peculiar fitness for the post, and notwithstanding his being a leading member of the Opposition.[e]

'The greater part of all local patronage has been dispensed [by the patronage secretary to the Treasury] through the hands of members of Parliament, supporting the ministers of the day. They have claimed and received it as their right; and have distributed it, avowedly, to strengthen their political connection.'[f]

On May 24, 1860, the then lord-lieutenant of Ireland (Lord Carlisle) was called upon in the House of Lords to defend an appointment he had made to a lieutenancy in an Irish county. While vindicating the propriety of his choice, he admitted that if he had had recourse to persons differing in political sentiment from the government, he might have found one or two persons more eligible for the post; but, he added, 'I think it due to those who concur in political opinion with her Majesty's government, whenever I have to assign stations of honour and distinction, unless there is some strong reason to the contrary, to give the preference to those who entertain the opinions and support the principles to which I myself owe the position I hold, and the power I possess of dealing with such matters at all.' 'This,' he continued, 'has been the general practice in this country;' in proof of which assertion he

[d] Lewis, Administrations, p. 55

[e] Com. Pap. 1859, sess. 2, v. 15, p. 576.

[f] And see Hans. D. v. 172, p. 954. *Ib.* v. 195, p. 482. Earl Grey, in his essay on Parl. Govt. new ed. p. 48, points out the tendency to encourage corruption, and especially that kind of corruption which consists in the misuse of patronage as 'inherent in the system of parliamentary government.' For further particulars as to the usage of ministries in the distribution of the patronage of the crown, see vol. 2, c. 'On the Office of Prime Minister.'

cited several notable examples.[g] On June 26 following it was moved in the House of Commons to resolve that 'fitness has not been primarily considered in certain appointments made by the lord-lieutenant of Ireland;' but it being conclusively shown that this charge was wholly destitute of foundation, the motion was negatived without a division.

In January 1882, Sir John Holker, late attorney-general in the Conservative (Beaconsfield) administration, was appointed by the Gladstone (Liberal) ministry, a lord justice of appeal.

Non-political appointments.

We now proceed to notice the exceptions to this practice, which are both numerous and important.

In the Church.

In the first place, in the disposal of the ecclesiastical patronage of the crown, it is not the rule that it should be generally given to partisans of the existing government. Appointments to bishoprics, and other dignified offices in the Church, and to the more valuable livings in the gift of the crown, are usually made upon the recommendation of the prime minister, and he is careful to consult the general interests of the Church, in such nominations, without reference to mere political or sectional opinions.[h]

Lord John Russell stated that, with regard to bishops, he thought the minister generally recommended persons who agreed with him in political opinion, they having seats in the House of Lords. But, of late years, a stricter impartiality has been observed in the selection of persons for this sacred office.

The lord chancellor has the distribution of a very large amount of inferior Church patronage, which he is free to dispose of 'according to his notions of what is due to religion, friendship, or party;'[i] but as a rule the distribution of Church patronage by ministers of the crown is not influenced by political considerations.[j]

In the army and navy.

In the appointment, or promotion, of naval and military officers, and of persons employed in the civil

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[g] Hans. D. v. 158, pp. 1644-46.

[h] See Rep. on Off. Salaries, Com. Pap. 1850, v. 15. Ld. John Russell's Evid. 309, 1282.

[i] Ld. Campbell's Lives of Chan. v. 1, p. 20.

[j] Earl Granville, Hans. D. v. 207, p. 1865.

branch of the Admiralty, political distinctions are almost invariably overlooked. It is universally recognised as the duty of those who are entrusted with the patronage of the crown, to be guided in the distribution of promotion and professional employment in the army and navy by the rules of the service and the merits of the case, and to permit no interference by members of Parliament to influence them in such matters.[k] Any minister would incur inevitable disgrace who should be actuated by political or party preferences on such occasions, and should select inferior men, because of their political opinions.[l] Promotion in militia regiments is, as a rule, conducted on the principle of seniority.[m]

In the appointment or retention in office upon a change of ministry of ambassadors or ministers abroad, and other members of the diplomatic service, their personal fitness is solely considered irrespective of their political opinions, which practically are never found to interfere with the impartial discharge of their official duties.[n]

Judicial offices.

It is the same with regard to appointments to judicial offices. With the exception of the office of lord chancellor, which is political and ministerial, and of the post of chief justice of the Queen's Bench, which is usually conferred upon the law officers of the crown, no such principle would be permitted to prevail in England, as that seats upon the bench should be given to political partisans.[o]

Lord Lyndhurst was made chief baron of the Exchequer in

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[k] Grey, Parl. Govt. p. 160. Com. Pap. (on Admiralty), 1861, v. 5, pp. 52, 109. Clode, Mil. Forc. v. 2, p. 741.

[l] Mr. Grey and Mr. Fox's speeches, Parl. D. v. 4, pp. 342, 358. Admiral Seymour's Evid. before Com[e]. on Navy Promotions, Com. Pap. 1863, v. 10, p. 71. Index to Rpt. p. 480. Clode, Mil. Forc. v. 2, p. 92.

[m] Hans. D. v. 172, p. 1472.

[n] Earl of Derby, Rep. Diplomatic Service, Com. Pap. 1870, v. 7, pp. 465, 471, 483.

[o] Yonge, Life Ld. Liverpool, v. 1, p. 265. Hans. D. v. 173, p. 205.

1831, upon the recommendation of his political rival Lord Brougham, who then held the great seal. Lord Campbell, when lord high chancellor, appointed Colin Blackburn to be a judge of the Court of Queen's Bench, although he was of opposite politics, and was only known to the chancellor by his professional reputation.[p] And on July 3, 1865, the attorney-general stated in the House of Commons that Lord Chancellor Westbury had exercised his judicial patronage without regard to the interests of party; and that he had selected a political opponent (Mr. Montague Smith, a Conservative member of the House of Commons) to fill the last vacancy upon the bench, and another Conservative gentleman to be chief registrar of the Court of Bankruptcy, because he considered them to be the most qualified persons for the said offices. In the appointment of County Court judges he had also striven to select men for their merit and qualification, without regard to personal or party considerations.[q]

In Ireland, it is true, a greater laxity on this point has prevailed; and while the Derby administrations, in 1852 and 1858, afforded examples of promotion from the Irish bar of political opponents of the government, yet 'no doubt, in Ireland, promotions to the bench have been made in general, by both sides, on party grounds.'[r]

Offices in the gift of judges.

Subordinate offices in the superior courts of justice in England are in the gift of the heads of the several courts, to whom such officers are responsible for their proper conduct.[s] A different practice prevailed in Ireland, where, by an ancient prerogative of the crown, certain of these appointments were conferred by the lord lieutenant. But in 1871 this judicial patronage was conferred upon the judges, save only that junior clerkships in the courts are now filled up by open competition.[t]

Upon the retirement of Sir John Rolt, one of the lords justices

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[p] Mac. Mag. v. 11, p. 18.

[q] Hans. D. v. 180, p. 1128; *Ib.* v. 189, p. 1611.

[r] *Ib.* v. 173, p. 205; v. 220, p. 430.

[s] Question raised as to proper exercise of judicial patronage in appt. of clerk of assize, Hans. D. v. 192, pp. 343, 407. In the appt. of revising barrister, *Ib.* v. 198, pp. 1487, 1535, 1541. In appt. of official referees under Judicature Act, *Ib.* v. 229, p. 1309.

[t] Hans. D. v. 189, pp. 842, 1602. But see 34 & 35 Vict. c. 72, § 14 Hans. D. v. 235, p. 1572.

of appeal in 1868, the Derby government offered the situation to Sir Roundell Palmer, M.P., who had been attorney-general in Earl Russell's administration. But the offer was declined. Shortly afterwards, the same ministry conferred a vacant judgeship upon Mr. Hannen, a Liberal. And in the succeeding administration of Mr. Disraeli, Sir W. Page-Wood, a Liberal, was appointed one of the lords justices; and Mr. G. M. Giffard, also of Liberal politics, a vice-chancellor.

Civil service nominations.

As respects civil service nominations, for minor appointments to office, before the introduction of the competitive system, Lord Palmerston has testified that they were 'often given without regard to political considerations.'[u]

Promotions.

Promotions in the civil service are wholly uninfluenced by party motives.[v] In fact, stringent regulations have been adopted and enforced by government to discountenance attempts on the part of public officers to obtain promotion by such means. Circulars have been addressed to members of Parliament by the heads of the principal administrative departments, calling attention to orders in council, which strictly forbid the endeavour to interest members of Parliament in applications for promotion or pecuniary advancement, and declaring that any attempt to obtain promotion by political or other indirect influence will be punished.[w] On the other hand, some public servants are forbidden by law (*post*, p. 633) to exercise the elective franchise, lest they should be subjected to undue political influence by their official superiors. In other cases, where the franchise is not restrained, care has been taken to prevent its independent exercise from being interfered with.[x] These measures, coupled with the general adoption of the system of competitive examinations, in appointments to office, have done much to prevent the abuse of patronage for party purposes.

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[u] Hans. D. v. 172, p. 968; v. 187, p. 621.
[v] *Ib.* v. 207, p. 1865.
[w] See *post*, p. 649.
[x] *Ib.* p. 633.

The right of making appointments in the public service has been, in certain cases, expressly conferred upon the crown by statute. Nevertheless, since the introduction of the competitive system, appointments are ordinarily conferred only in accordance with the provisions of orders in council regulating the same. But so long as the statutes are unrepealed, the crown possesses a reserved right to exercise the statutory power in such cases, and to set aside, at its discretion, the regulations established by order in council.[y]

Crown patronage, its extent and distribution.

The entire patronage of the crown in Great Britain was computed in 1863 at about 105,000 offices.[z] After excluding the different classes of appointments in regard to which, as we have seen, the influence of party was but small, there still remained a considerable amount which was regarded as being available for distribution amongst the friends and supporters of the existing administration. Patronage of this description was generally exercised through the instrumentality of the parliamentary secretary to the Treasury, or the political secretary of the department concerned, and upon the recommendation of members of Parliament, particularly when they were avowed supporters of the government.[a] But the recommendations of members did not bind the discretion of the executive, and were sometimes disregarded in favour of a more suitable choice.[b]

But parliamentary influence was often exercised in regard to nominations, or first appointments, in the civil service, irrespective of the member being a supporter of government. Thus, in 1867, Sir P. O'Brien, a Liberal member of the House of Commons, wrote

[y] Sir W. Dunbar, Rpt. Pub. Accts. Com. Pap. 1874, v. 6, pp. 37, 50.

[z] Hans. D. v. 172, p. 956. Of this number it is stated that the *employés* of the civil service amounted, in 1862, to 43,163, while in 1822 they were only 18,500. *Ib.* v. 176, p. 1,944. But of late years the *employés* in the civil service have considerably increased. *Ib.* v. 193, p. 1187. In 1873 they were computed to number 43,569 (irrespective of civilians in military and naval depts.) *Ib.* v. 214, p. 613.

[a] Com. Pap. 1854 55 on Civ. Ser. v. 20, p. 112. Hans. D. v. 188, p. 1034; v. 193, pp. 323, 1286; v. 207, p. 1706.

[b] Hans. D. v. 197, p. 1421.

to the postmaster-general of Lord Derby's administration, saying, 'During the fifteen years I have been in Parliament, I have been allowed the privilege of nominating young men to offices in various branches of the public service, nearly all whom, as far as I can recollect, have given satisfaction.'[c] But all parliamentary patronage is now abolished; and the rule is laid down that 'applications [for appointments] through members of Parliament are calculated to defeat rather than promote the object in view.'[d]

In the United States the delegates to Congress from the several states are gradually absorbing the executive function of appointing to all minor offices, as vacancies occur in the states they represent. The evil tendencies of this practice are manifold.[e]

It included first appointments to minor and subordinate offices, and nominations, under the competitive examination system, until that gave place to 'open competition.' The principal members of the ministry were careful, however, to hold themselves aloof from such transactions, lest their position should be compromised thereby.[f] Nevertheless, in every branch of the public service the political head of the department was responsible, if not for every individual appointment, at any rate for the regulations under which the patronage was bestowed.[g]

Competitive examinations for civil service.

The system of competitive examinations, to which reference has already been made, was introduced for the express purpose of doing away with abuses in regard to patronage. From its first organisation the constitution of the civil service of the crown has been regulated by royal orders in council.[h] The principle of competitive examinations for appointments in the civil service was introduced by the same authority by an order in council of May 21, 1855,[i] having been

[c] Case of A. G. Duffy, Com. Pap. 1867-8, v. 41, p. 317; Hans. D. v. 193, p. 1409.

[d] Rept. Civ. Serv. Inquiry Com^n. Com. Pap. 1875, v. 23. Mr. Mundella, M P., on this point, N. Am. Rev. v. 124, p. 19.

[e] Am. L. Rev. v. 5, p. 373.

[f] Com. Pap (Rept. on Dockyard appoint^s.), 1852-3, v. 25, pp. 300, 344, 363.

[g] *Ib.* Rept. p. xii.

[h] See Sir James Stephen's letter on reorganisation of Civ. Serv. in Com. Pap. 1854-5, v. 20, p. 81.

[i] Hans. D. v. 138, p. 2157; v. 139, p. 682.

Competitive examinations.

recommended in November 1853, in a report on the organisation of the Permanent Civil Service, by Sir Stafford Northcote and Sir Charles Trevelyan. Resolutions in favour of this principle were agreed to by the House of Commons on April 24, 1856, and on July 14, 1857. Nevertheless, its adoption in the various parts of the service was gradual.[j]

In the House of Commons, a debate arose on April 1, 1862, and July 17, 1863, wherein the objections to the new system were very forcibly urged. The government upon both occasions explained the extent to which the system had been already adopted, and showed that the principle of competitive examinations was being gradually introduced throughout the public service. But Lord Grey, in the new edition of his Parliamentary Government, points out the peculiar abuses which have arisen in the working of the competitive system, and strenuously condemns it, as being 'radically wrong,' and calculated to obtain in general a less efficient class of public servants than those appointed by government under the old system.[k]

In some departments open competition was the rule from the first; in others a limited competition among three candidates. In the civil and medical services of India,[l] the army generally, certain naval establishments, and nearly all the civil departments of the state, open competition was established, and thereby ceased to afford patronage to ministers.

Twenty years before, in the India Bill of 1833, Mr. Macaulay had proposed to rearrange the system of appointment to the Indian civil service on the basis of competition. But though agreed to by Parliament these clauses were a dead letter, and were afterwards repealed. Nevertheless they were re-enacted, by the help of Macaulay's powerful advocacy, in the India Act of 1853.

The existing arrangements in regard to competitive examinations for military or first appointments in the

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[j] Com. Pap. 1868–9, v. 18.

[k] See also Mr. Childers' and Mr. Hunt's observations, Hans. D. v. 193, pp. 1191, 1197; Quar. Rev. v. 127, p. 64; Ed. Rev. v. 139, p. 330; Duke of Northumberland's address in Social Science Trans. 1870, p. 9; Helps on Government, pp. 62–78; Sir A. Helps' Letter to the Civ. Serv. Inquiry Com^{n}. in 1874; Com. Pap. 1875, v. 23, p. 361; 19th Cen. v. 8, p. 715.

[l] As to working of system in India, see Com. Pap. 1870, v. 7, p. 449.

civil service as prescribed by various orders in council, passed in the years 1862 to 1872, are explained in the Seventeenth Report of the Civil Service Commissioners.[m]

Civil service appointments.

In 1860 a select committee of the House of Commons was appointed to consider the whole subject of civil service appointments. They recommended the application of the method of limited competition to certain classes in the service, as preliminary to the future extension of a system of competitive examination for all junior clerkships in the civil service, which should be open to all her Majesty's subjects.[n] These recommendations were approved of by the government, and measures taken in 1861 to apply them to the clerkships under the control of the Treasury.[o]

On April 9, 1869, Mr. Fawcett moved to resolve that in the opinion of the House of Commons all appointments to the civil and diplomatic services ought to be obtained by *open competition*. But as the adoption of this principle would require 'a thorough reorganisation of the civil service, with a view to a division being made between the merely mechanical and the intellectual work'—a duty which the government could not then venture to undertake—ministers opposed the motion, and it was lost on division.[p] On February 25, 1870, Mr. Fawcett renewed his motion, but was met by an assurance that the government contemplated the speedy introduction of a system of open competition on a sufficiently large scale to give it a fair trial, whereupon the motion was withdrawn. It was afterwards stated that, should the new system prove successful, it was certain ultimately to become universal.[q]

By order in council, dated June 4, 1870, the principle of public open competition for admission into the

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[m] Com. Pap. 1872, v. 19.
[n] *Ib.* 1860, v. 9, p. 14.
[o] *Ib.* 1867–8, v. 22, p. 6.
[p] Hans. D. v. 195, p. 480.
[q] *Ib.* v. 203, p. 153.

Competitive system.

civil service was established, and applied to nearly all the public departments, the Home and Foreign Offices and British Museum[r] alone being at that time exempted from the operation of the new system, on account of the highly confidential and delicate nature of a large portion of the duties transacted therein; likewise the two Houses of Parliament, for special reasons. From the Civil-Service Commissioners' Report in 1872, it appears that in the House of Lords and in the Foreign Office (but not including the diplomatic service) the system is being gradually adopted.[s] And in 1874 the Home Office introduced the competitive system.[t]

So that now patronage has been abolished, and the principle of competitive examinations introduced in all the public departments, except the diplomatic service and the British Museum, wherein the trustees have hitherto declined to adopt the recommendations of the Treasury, though they have declared themselves favourable to a scheme of limited competition.[u] Competitive examinations have also been established in regard to first appointments to commissions in the army.[v] The system was likewise introduced into the navy in 1869, but after a short trial it was abandoned in 1875.[w] In all other departments it has been determined to adhere to the competitive system, as being (if not the best system that could be devised) the one most suited to our present social and political condition, and as being of incalculable advantage to

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[r] Hans. D. v. 217, p. 1454.

[s] 15th, 16th, and 17th Reps. Civ. Serv. Comms. Com. Pap. 1870, v. 19; 1871, v. 17; 1872, v. 19. Mr. Gladstone, Hans. D. v. 201, p. 1944; v. 202, p. 388; and see *Ib.* v. 203, pp. 153, 254. As regards the Foreign Office, see Rep. Dip. Serv. Com. Pap. 1870. v. 7, p. 456; *Ib.* 1872, v. 7, p. 407. The Treasury claim to have a discretionary right in certain cases of dispensing with the orders in council establishing the competitive examinations. Com. Pap. 1873, v. 39, p. 103.

[t] Rep. Comr. Pub. Accts. Com. Pap. 1874, v. 6.

[u] 2nd Rep. Civ. Ser. Comn. Com. Pap. 1875, v. 23, pp. 460, 548. Hans. D. v. 234, p. 858.

[v] See *post*, v. 2.

[w] *Ib.*

the heads of public departments in relieving them of patronage.[x] [Certain changes were made in 1876 in the working of the system in reference to candidates for the Indian civil service.][y]

On February 23, 1877, it was moved in the House of Commons to resolve that the principle of open competition now generally prevalent in the public service should be extended to the Foreign Office and the diplomatic service. [In the Foreign Office some six to fourteen nominees of the foreign secretary are subjected to a competitive examination, and in the diplomatic service members are admitted by nomination on a test examination.] After debate the motion was negatived on division.

But in cases where appointments have been made in public departments without the intervention of the civil service commissioners, through inadvertence on the part of the heads of such departments, and without any default on the part of the persons so appointed, Acts have been passed to validate the appointments, and to entitle the appointees to the benefit of the Superannuation Act.[z]

Parliamentary officers.

Even the officers and servants attendant upon the two Houses of Parliament are not appointed by the Houses themselves, but either (as in the case of the principal officers) by letters-patent from the crown, or by the lord chancellor, or the clerk, sergeant-at-arms, or usher of the black rod, or by the Speaker, according to the department to which the particular office may belong, subject to the approbation of the House itself.

Marq. of Salisbury, Hans. D. v. 230, p. 1467.

[y] 20 Rep. Civ. Serv. Comn. Com. Pap. 1876, v. 22, pp. 5–10.

[z] 36 Vic. c. 23; Hans. D. v. 225, p. 1482; 39 & 40 Vict. c 68; 1st Rep. Pub. Accts. Comn. Pap. 1875, v. 8, Evid. p. 35. For an enumeration of the classes of civil servants who are not now appointed by open competition, but selected by a minister or permanent head of department, see Com. Pap. 1877, v. 15, p. 502. For lists of persons irregularly appointed, confirmed in office under the Act, Com. Pap. 1877, v. 49, pp. 391, 585.

The clerk and clerk assistant of the House of Lords are both appointed by the crown. The clerk of the House of Commons is appointed by the crown, upon the recommendation of the prime minister,[a] the clerk's assistant by the crown, upon the recommendation of the Speaker.[b] Such functionaries in either House are 'removable only by her Majesty, upon an address of the House to her Majesty for that purpose.'

It is not usual for any direct resolution of sanction to be passed, except in the case of the clerks at the table of the House of Lords. But it is competent to committees of either House to report their opinions as to the filling up of vacancies, and as to the salaries, arrangements, and classification of the establishment generally.[c] The House of Commons appoint their Speaker and the chairman of the committee of Ways and Means; the House of Lords their chairman of committees, and the examiners of standing orders for private Bills.[d]

Representation in Parliament of every public department.

As a necessary consequence of the division of the civil service into political and non political officers, and of the acknowledged supremacy of the members of the administration over all the subordinate *employés*, it is required by our parliamentary system that every branch of the public service should be represented, either directly or indirectly, in the Houses of Parliament. This duty is performed by the political heads, who are themselves solely responsible for every act of administration down to the minutest details of official routine. Having entire control over the public departments, they are bound to assume responsibility for every

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Hans. D. v. 114, p. 142.

Ib. v. 140, pp. 258, 447; 5 Geo. IV. c. 82; 19 Vic. c. 1; Com. Pap. 1856, v. 51, p. 1. As to appointments in clerks' depart. see *Ib.* 1847–8, v. 18, pt. 1, p. 95; Hans. D. v. 202, pp. 386, 388; v. 204, p. 233. In the sergt.-at-arms' depart. *Ib.* v. 16, p. 45. As to appointments in H. of Lords, see 5 Geo. IV. c. 82; Lords' Jour. v. 67, p. 622; v. 80, pp. 122, 177; v. 94, p. 66.

[c] Com. Pap. 1847–8, v. 18, pt. 1, p. 13; Lords' Jour. v. 67, p. 621; v. 77, p. 1130; v. 94, p. 276.

[d] Hans. D. v. 114, p. 48; S. O. H. of Lords. May, Parl. Prac. 1883, pp. 507, 657.

official act, and not to permit blame to be imputed to any subordinate for the manner in which the business of the country is transacted, except only in cases of personal misconduct, for which the political chiefs have the remedy in their own hands.[e]

Subordination of all permanent officers to some political head.

'It is no arbitrary rule,' says Lord Grey, 'which requires that all holders of permanent offices must be subordinate to some minister responsible to Parliament, since it is obvious that without it, the first principle of our system of government—the control of all branches of the administration by Parliament—would be abandoned.'[f] But the control of Parliament, as will hereafter appear, is general, and does not admit of any direct interference with the subordinate officers of government.

So strict is the rule of ministerial supremacy as to forbid any orders to be given to any public servant of the crown, by either house of Parliament, except through the regular channel of official communication, namely, a secretary of state, or other officer who may be authorised to convey the royal commands.[g]

Absolute power in the crown to dismiss all public servants:

So, also, as regards the dismissal of persons from public employ; the crown possesses by virtue of its prerogative an absolute legal power to dismiss any of its servants holding office 'during pleasure,' on the advice of its responsible ministers.[h] Such a power 'is indispensable, in order to give to the latter that authority over those by whose agency and assistance they carry on the public business, without which they could not justly be held accountable by Parliament for the manner

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[e] For further particulars on this head, see vol. 2, c. on the Cabinet Council.

[f] Grey, Parl. Govt. new ed. p. 300.

[g] Case of Sir Baldwin Walker, Hans. D. v. 161, pp. 1631–1641; v. 162, pp. 235–247.

[h] Chitty on Prerog. 82. See the case of Earl Howe in Mir. Parl. 1831, p. 3127. Case of Sir S. Robinson, Hans. D. v. 205, p. 1324. Case of Surgeon-Major Tufnell, L. T. Rep. N.S. v. 34, p. 838. As regards officers in the navy, army, or militia, see *ante*, p. 530.

With certain exceptions.

in which affairs are conducted.'[i] But such dismissals should take place without cause assigned. If a reason be given, it must be for an offence known to the law, and for which there has been a lawful trial and conviction.[j] Moreover, as respects those offices which are held 'during good behaviour,' a tenure which has been applied by Acts of Parliament to the judges (whether their jurisdiction be local or general), the comptroller and auditor-general, the assistant comptroller, the clerk of the Parliaments, and the clerk and clerk's assistants of the House of Commons, and various other functionaries, whose position is one that makes it desirable that they should be independent of the crown, holding their offices for life, the incumbents thereof are only removable (except in the case of certain officers of inferior grade) by legal process, or upon addresses from one or both of the Houses of Parliament, as the case may be.[k]

Dismissals only occur for incompetence or misconduct.

But while every government must necessarily possess the abstract right of dismissing any of its servants who may hold their offices 'during pleasure,' whenever they consider that such a step is required by the exigencies of the public service, it has nevertheless been recognised as a rule that persons holding non-political offices under the crown should only be dismissed for incompetence or misconduct.[l] Dismissals on other grounds are highly objectionable and inexpedient; more especially if they spring from political considerations. Doubtless, an active interference in politics, on the part

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[i] Grey, Parl. Govt. new ed. p. 326. It is an invariable rule that no man dismissed from one public dept. shall be admitted to another. Hans. D, v. 227, p. 560.

[j] Law Mag. v. 2 (1856), p. 180.

[k] Broom, Const. Law, pp. 525, 701. As to clerks of peace, who hold office *quamdiu bene gesserint*, Hans. D. v. 173, p. 708; 27 & 28 Vict. c. 65. For legal effect of this tenure, see Hans. D. v. 180, pp. 295, 304; and *post*, v. 2. For list of offices of courts of law in Great Britain and Ireland which are held for life, see Com. Pap. 1874, v. 24, p. 580.

[l] Grey, Parl. Govt. p. 287. Mr. Gladstone, Hans. D. v. 205, p. 1324; and 3rd Rep. Com^s. Civ. Serv. Expend. Com. Pap. 1873, v. 7, p. 649.

of a non-political office-holder, would be a case of 'misconduct' sufficient to justify his dismissal. It is a well-understood rule of constitutional government, that all such functionaries 'should abstain from taking an active part in political contests,' observing a strict neutrality therein. If a contrary practice prevailed, it would inevitably follow that the opposite party, on succeeding to power, would retaliate on those who had assisted to uphold a rival ministry; and thus a repetition of vindictive and extensive changes amongst government *employés* would occur, that would prevent the growth of experience in office, and destroy the efficiency of the public service.

Case of Mr. Beales.

In August 1866, the Lord Chief Justice of England, Sir Alexander Cockburn, dismissed, or rather declined to reappoint, as usual, Mr. Edmund Beales, as revising barrister for the county of Middlesex, on account of his having taken 'a very active and leading part in a political agitation of no ordinary character,' having for its object the endeavour to bring about a radical reform of Parliament. Revising barristers are annual appointments, but it is customary to nominate the same person year by year, unless for some special reason; so that declining to reappoint, in the present instance, was equivalent to dismissal. The chief justice conveyed his sentiments to Mr. Beales on this occasion, in an explanatory letter, wherein he stated that he was 'very far from thinking that to entertain or to express decided political opinions ought to be considered as disqualifying a member of the bar from holding office as a revising barrister. In making these appointments,' his lordship added, 'I have looked only to the fitness of the candidates, and have never stopped to enquire what were their political views. But, on the other hand, I must say I do not think it desirable that a gentleman holding what, in the view of many persons, would be deemed extreme opinions, and occupying a prominent position in the political warfare of the day—whether on the one side or the other—should be appointed to decide judicially on the claims of persons to vote in the election of members of Parliament.' Mr. Beales remonstrated against his removal, as being, in his opinion, uncalled for and unjustifiable, but acknowledged the kindly and friendly spirit in which his lordship had acted towards him.[m]

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[m] See correspond. in Jurist, v. 12, pt. 2, p. 346. See action taken by government in 1841, upon complaint of clerks of justices of peace in

In 1869, Lord Chancellor Hatherley appointed Mr. Beales a county-court judge. His conduct in that capacity gave general satisfaction.[n]

Fidelity in the public service.

All public *employés*, whatever may be their private convictions on political questions, are bound to discharge their duties towards their official superiors for the time being honestly and faithfully, affording to them all the assistance in their power. But this assistance is necessarily limited to the sphere of official obligation, and does not require the surrender of private opinions, or justify an intermeddling, on behalf of their employers, in political strife. While, on the one hand, the practice of depriving persons of subordinate offices simply on account of their political views is destructive of all efficient administration—as the example of the American Republic has strikingly shown—on the other hand, it is manifestly unreasonable that any public servant should be permitted to continue in active opposition to the existing government.[o]

Any connection of public officers with the press, which should lead to the improper use of official information, or which would disturb the confidential relations which ought to subsist between members of the civil service and their chiefs, is strictly prohibited.[p]

Even the mere exercise of the political franchise by a subordinate servant of the crown, though not prohibited, may be considered, as a general rule, to be inexpedient.[q] All persons engaged in the management or collection of the public revenue were, by statutes passed in the last century, expressly disqualified from voting at parliamentary elections. So strictly was this enforced that country postmasters in

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Scotland, acting as 'political agents.' Mir. Parl, 1841, p. 2216.

[n] Hans. D. v. 209, p. 440.

[o] Desp. of col. secretaries to Lieut.-Gov. of N. Scotia in 1848 and 1860 in respect to control and dismissal of public officers, Toronto Globe, 22 Sept. 1860. Desp. to Gov. of Jamaica prohibiting public officers from writing offensive letters in the press, Com. Pap. 1860, v. 45, p. 363; Hans. D. v. 171, p. 722. Also correspondence between col. sec. and Gov. of New Brunswick respecting dismissals from office for political reasons, New Bruns. Ass'y. Jour. 1862, pp. 192-196.

[p] Hans. D. v. 225, pp. 912, 915.

[q] Grey, Parl. Govt. new ed. p. 235. Hans. D. v. 189, p. 747; v. 194, p. 1598.

receipt of but 4*l.* a year from the state were disfranchised. And by later enactments, all persons connected with the police or constabulary force, in town or country, were and still continue to be prohibited from exercising the elective franchise.[r] With this exception, however, no one is forbidden to vote by reason of his holding an office under the crown, or because he may be in receipt of a fixed income from the public revenue.[s] But motions to insert clauses in the Reform Bill of 1867 to restore the franchise to revenue officers and to the police force were negatived.[t] Nevertheless the tendency of recent departmental regulations has been to secure a greater degree of independence than formerly to those public servants who are permitted to exercise the political franchise. Thus Mr. Ferrand, a political opponent of the government, was elected a member for the borough of Devonport, in February 1863, against one of the lords of the Admiralty, although the constituency comprises a large number of *employés* in the Admiralty dockyards, whose votes turned the scale in favour of Mr. Ferrand.[u] At the general election in 1865, Devonport returned two Opposition members; but, upon petition, they were both unseated for bribery practices.[v] The royal commission on dockyards, in 1860, recommended the disfranchising the dockyards, but this was not approved of by the government.[w] However, the Reform Bill introduced by Mr. Gladstone in 1866 contained a clause for the disfranchisement of the dockyard labourers; avowedly in order to protect members from the undue influence on the part of constituents who are dependent upon government for their daily wages.[x] Mr. Gladstone's Bill did not pass, but, in 1867, it was stated by a member for a dockyard town that, as the result of an improved departmental system, 'government influence in the dockyards was of no value now to any candidate.'[y] The government now give a half-holiday to dockyard voters to enable them to exercise the franchise at their own discretion.[z] It has been estimated that the number of dockyard voters, in the several boroughs of Chatham, Devonport, Greenwich, Portsmouth, and Pembroke, who would have been disfranchised had this Bill become law was 3,655.[a]

All interference in politics objectionable.

It is not easy to define the extent of 'misconduct' of this description which should properly subject a permanent officer of the crown to dismissal. During a

[r] Rogers, Elections, ed. 1885, pp. 122, 123.

[s] Hans. D. v. 169, p. 524; v. 188, p. 1035.

[t] *Ib.* v. 188, pp. 1032-1036, 1202.

[u] *Ib.* v. 169, p. 784.

[v] *Ib.* v. 183, p. 643.

[w] *Ib.* v. 171, p. 670.

[x] *Ib.* v. 181, p. 1876; v. 182, pp. 68, 72, 1177; and see *Ib.* v. 193, p. 1081.

[y] *Ib.* v. 186, p. 1372.

[z] *Ib.* v. 221, p. 1035.

[a] Com. Pap. 1866, v. 57, p. 43.

period of great political excitement the government may be constrained to act with more severity towards public servants who may take an active part in politics, than at ordinary times.

Dismissal of Earl Fitzwilliam.

For example, in 1819, when party feelings ran very high, Earl Fitzwilliam, an amiable and loyal nobleman, was summarily dismissed from his office of lord-lieutenant of the West Riding of Yorkshire, because he had joined in calling a meeting of freeholders to consider of petitioning the king, and the two Houses of Parliament, upon the existing state of public affairs, in terms supposed to reflect upon an answer recently given by the Prince Regent to an address from the City of London.[b] The ministry, being interrogated in Parliament in regard to this dismissal, justified it on the ground that 'it was essential to the due administration of public affairs, and to the dignity of the crown, that none of its servants should hold opinions of it derogatory to its honour and character.'[c]

In 1868, however, a Bill introduced into the House of Commons by a private member, to permit revenue officers to exercise the franchise, was allowed to become law,[d] notwithstanding reports made to the Treasury by the commissioners of Customs and Inland Revenue that the measure was highly objectionable, and must inevitably lead to mischievous results.[e] But an attempt made in 1869 to remove the remaining restrictions which prevent customs officers from taking any active part, and officers in the Post Office from voting at elections, was opposed by ministers, on the ground that those concerned in collecting the revenue occupy a very different position from other public officers, and that if such persons were permitted 'to mix themselves up actively in political life, the neutral position which they now occupy between the two parties in the state would be destroyed.' The Bill was accordingly rejected.[f] In 1870, a motion for a committee of enquiry into the extent of these disabilities was proposed, and after a brief debate withdrawn.[g] But in 1874 an Act was passed to abolish all existing penalties against the interference of revenue officers, &c., at elections; leaving it to the discretion of the executive government to issue any order whatever with regard to revenue and customs officers taking part in elections.[h] The commissioners of Customs and Inland Revenue, however, again protested against this Bill.[i]

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[b] Campbell's Chanc. v. 7, p. 335. May, Const. Hist. v. 2, p. 197.

[c] Parl. D. v. 41, p. 102.

[d] Hans. D. v. 192, p. 1533; v. 193, pp. 389-410, 1078; 31 & 32 Vict. c. 73; 33 Vict. c. 11.

[e] Com. Pap. 1867-8, v. 56, p. 490.

[f] Hans. D. v. 194, pp. 1573-1599.

[g] *Ib.* v. 199, p. 698; also *Ib.* v. 210, p. 886.

[h] *Ib.* v. 219, p. 797; 37 & 38 Vict. c. 22.

[i] Com. Pap. 1874, v. 53, p. 335.

It has been suggested that the relations between the subordinate class of public functionaries and the executive government should be regulated by statute, so as to prevent a possible abuse of power on the part of the responsible advisers of the crown towards their subordinates in office. But it has been well remarked by Lord Grey, that 'it would be impossible to limit the power of dismissal to cases in which misconduct could be proved before a court of law, without incurring the risk of having the executive government paralysed by the passive resistance of persons holding these situations, and by the obstructions they would be able to throw in the way of ministers they wished to oppose. Law would be too clumsy an instrument for regulating the conduct of the ministers of the crown and the permanent civil servants of the state in their relations to each other. This is now far more effectually and far more safely accomplished by the power of public opinion. So great is the authority of public opinion, that no minister now ever thinks of dismissing a public servant from those offices which are regarded as permanent, unless for gross misconduct; but at the same time he has the power (and public opinion would support him in using it) of dismissing such a servant for misconduct, which it might be impossible for any law to define beforehand, and of which there might be no legal evidence, though there was a moral certainty.'[j] Lord Grey proceeds to point out that active opposition to their political chiefs for the time being, or attempts to embarrass them either by passive resistance or by putting difficulties in the way of their administration of office, are just those kinds of misconduct which would be most dangerous, and yet most difficult to suppress or prevent by legal enactment.[k] 'The knowledge that

Exercise of the power of dismissal.

[j] Grey, Parl. Govt. new ed. pp. 326, 327.

[k] *Ib.* p. 327. See speeches of Earls Granville and Grey, in H. of L. April 18, 1864, on the Education Com. and the vote of the H. of C.

there is no legal restriction on the power of dismissal to prevent a minister from dealing with such a case as it would deserve, has probably been the principal reason why such cases do not arise; and, by preventing the possibility of a struggle between a government and its servants, has kept up the good feeling which has hitherto existed between them.'[1]

Work interfering with office hours contrary to rules of the service.

By a Treasury minute of March 27, 1849, the principle has been laid down that the public are entitled to the whole of the time of the civil servants of the crown, and that government *employés* should not be allowed to accept situations as directors of companies requiring their attendance elsewhere during office hours, or otherwise to engage in pursuits which would interfere with the proper discharge of their official duties.[m] But so long as civil servants discharge the duties of their departments satisfactorily, the government are disposed to refrain from interference with them in endeavours to improve their pecuniary circumstances.[n] On April 1878 the rule was further defined in respect to local offices, members of school boards, &c., and the opinion was strongly expressed that such extra employment is generally prejudicial to the public service, because no one can serve two masters. Such offices, if of profit, are specially objectionable. If not of profit, the chief of each department must consider and 'decide on the compatibility of functions in respect of character and time.'[o]

Whenever it is deemed advisable, in furtherance of

Grey, Parl. Govt. new ed. p. 327. See discussions in both Houses in 1872 as to alleged discourtesies in treatment of Dr. Hooker, direc. of Kew Gardens, by his official chief, the first comn. of works, Hans. D. v. 213, pp. 2, 709.

[m] Chanc. of exchequ Hans. D. v. 212, p. 954; also *Ib.* v. 219, p. 329. But this rule would not apply to professional men, *Ib.* v. 225, p. 904. In regard to persons in the army and navy taking part in religious services when off duty, see *Ib.* v. 213, p. 836.

[n] For example, by being directors of Co-operative Supply Associations, *Ib.* v. 221, p. 870; v. 225, p. 911.

[o] Com. Pap. 1882, v. 52, p. 639.

Pensions and retiring allowances.

proposed reforms or retrenchments in the public service, to dispense with the services of any particular class of public *employés*, it has always been customary to respect the claims of existing incumbents, by allotting to them suitable pensions or retiring allowances. It was well said by Edmund Burke, whose patient labours in the cause of national retrenchment were so eminently successful, that it was neither wise, expedient, nor just to interfere retrospectively with places or pensions; that reform ought to be prospective; that the duration of the life of a nation was not to be compared with the short duration of the life of an individual; that an individual hardship, and especially an injustice, ought not to be committed for the sake of arriving a few years sooner at the object Parliament had in view, namely, economical reform.[p] 'The reason why public retrenchment in this country has been satisfactory to the nation is this, that no country, no Parliament, in pursuing the work of retrenchment, ever has been so studiously observant of the claims of justice to every individual. And therefore the work of retrenchment must be a well-considered and a gradual work.'[q] It is to the credit of the imperial government that they have invariably acted upon this magnanimous principle. Authority has been given to the Treasury, by a general Act of Parliament, to make suitable compensation to all persons whose offices may be abolished;[r] and in cases which do not come within the purview of this Act, special provision is made by Parliament for the purpose.[s]

When the new Divorce and Probate Court was established, in 1857, provision was made to compensate the proctors who had

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[p] Mir. Parl. 1830, p. 1047.

[q] Mr. Gladstone's speech to electors of Greenwich, 21 Dec. 1868.

[r] 4 & 5 Will. IV. c 24; Com. Pap. 1852-3, v. 57, p. 717.

[s] Hans. D. v. 207, p. 308. See case of Sir R. Bromley in 1865, wherein the govt. and the H. of C. dealt as liberally as possible with a valued public servant upon his retirement, Hans. D. v. 180, pp. 499-508.

practised in the old Ecclesiastical and Prerogative Courts, which were then abolished. This compensation, including retiring allowances to judges and other officers of said courts, amounted to upwards of 116,000*l.* per annum.[t]

Formerly the lord chancellor was at liberty to increase salaries of clerks in the Court of Chancery, within certain limits, at his own discretion, but in 1869 an Act was passed providing that the Treasury should be a party to all alterations of salary in connection with the court, and in 1871 the committee on public accounts reported that it was desirable that the Treasury sanction should be obtained to all alterations of salaries and office expenses of the courts of law.[u]

Reports of Civil Service Expenditure Committee.

On Feb. 18, 1873, a select committee of the House of Commons was appointed to enquire into any and what reductions could be effected in the expenditure for civil services (other than the national debt and the civil list), whether charged on the Consolidated Fund or defrayed from votes of Parliament, with special reference to those branches thereof which are not under the direct or effectual control of the Treasury. This committee was presided over by Mr. Childers. It made three reports, and recommended that the enquiry should be continued in the next session. The new ministry, however, declined to propose a resumption of it.[v] But they decided to appoint a commission to enquire into various matters affecting the civil service.

The first report (March 31) recommended that, inasmuch as the mastership of the Rolls was about to be vacated, any new appointment in that department should be made subject to the express condition that the office may be abolished or modified, or its salary reduced by the Treasury, without compensation, and that the Treasury should at once proceed to revise this department. In their second report the committee

[t] Hans. D. v. 154, p. 1095. Com. Pap. 1861, v. 51, p. 495.

[u] Hans. D. v. 207, p. 169.

[v] *Ib.* v. 218, p. 628.

recommended that this principle should be applied to all salaried offices in legal departments within the scope of this enquiry.[w] Whereupon a Treasury minute was issued, authorising a circular to be sent to the judges, &c., in conformity therewith.[x]

Civil service expenditure.

The second report (June 12) dealt further with the administrative departments of the courts of justice in the United Kingdom, the expenditure for which amounts to 1,746,000*l.* per annum. While, as a rule, the Treasury claims and exercises a right to judge every measure increasing, or tending to increase, the civil expenditure, the functions of that department are not uniform in respect of all branches of the civil service. The power of the Treasury in dealing with the legal departments is to a great extent limited by statute, and is ineffectual to prevent excessive and ill-regulated expenditure. The committee therefore recommended (as preferable to enquiry by themselves) that these establishments should undergo a searching investigation by a competent commission of enquiry to be appointed by the crown. This enquiry to embrace the numbers, salaries, superannuations, mode of appointment, and promotion for each establishment, and should recommend who ought to be responsible to Parliament for their organisation, and what should be their relation to the Treasury; and in view of the probable changes under the Judicature Bill now pending (and since become law), should report what rules ought to be laid down as to compensation on abolition of judicial or other offices therein, with a view to general legislation on the subject.[y]

Report of Civil Service Expenditure Commission.

This commission of enquiry was appointed by the crown in October 1873. On December 8 they presented a first report, on

[w] Com. Pap. 1873, v. 7, pp. 387, 391.

[x] *Ib.* 1875, v. 61, p. 383. See Hans. D. v. 225, p. 1001.

[y] For steps taken by govt. to carry out this report, see Hans. D. v. 216, p. 1856; v. 217, p. 494.

Civil service expenditure.

the subject of the proper compensation to be allowed on abolition of judicial offices, or of subordinate offices in courts of justice, and on the possibility of utilising the services of persons in receipt of such compensation.[z] Certain subordinate offices connected with the great seal were abolished, and new provision made for the duties and salary of the clerk of the crown in Chancery in 1874, by the Act 37 & 38 Vict. c. 81. On July 31, 1874, the commission presented a second report, dealing with the organisation and duties of all existing administrative departments of the courts of justice, and making various recommendations to promote an efficient responsibility to Parliament for the same, and also to ensure a more direct and effectual control by the Treasury over financial arrangements in the legal establishments.[a] Being unable to agree as to the department of state which should be specially held responsible for the administrative departments in the courts of justice, the commission presented supplementary reports on this subject, pointing out opinions they had received from men of large administrative experience, in favour of assigning to the home secretary (in connection with the office and responsibilities of a minister of justice) the oversight and control of the legal departments, and, on the other hand, adverse opinions, in favour of a recognition of the responsibility of the lord chancellor for the same. The majority of the commissioners were of opinion that this was a question of policy not properly before them. Accordingly, in the absence of any larger scheme, they recommended that the control of the lord chancellor should be acknowledged and made operative throughout all the departments of the High Court of Justice, and be exercised in concurrence with the Treasury. The minority of the commissioners objected to any scheme which would lessen the authority and responsibility of the lord chancellor.[b] In 1876 ministers stated that they were about to give effect to the recommendations of the commission.[c]

The third report (on July 25) proposed for consideration the expediency of amalgamating the Customs and Inland Revenue Boards, and whether the increasing charge for the departments under the postmaster-general was required, but deferred such enquiries until next session, when they recommended that the committee should be reappointed.

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[z] Com. Pap. 1874, v. 24, p. 557.

[a] *Ib.* p. 583. Upon which recommendations, see Hans. D. v. 233, p. 1449.

[b] 2nd Rep. Com. Pap. 1875, v. 30, pp. 658–679.

[c] Hans. D. v. 227, p. 1838; v. 232, p. 1019.

Civil service expenditure.

Meanwhile, it dealt with the question of economical reform in the organisation of the permanent and temporary staff in the civil departments. This report embodies various recommendations with a view to the reduction in numbers and cost of these establishments, regard being had to the claims of existing incumbents. The committee regret that the policy of the rules embodied in the orders in council of 1870 and 1871, for the entry by competitive examinations into the civil service, has not been always applied with harmonious action between the Treasury and particular departments, and they express their opinion 'that careful regard to the respective functions of the Treasury and of the heads of departments, should prevent a recurrence of such differences.' The committee further remark, in reference to the authority of the Treasury in deciding upon the necessary establishments of the various civil offices, that 'inasmuch as the civil estimates are presented to Parliament on the responsibility of the Treasury, and are moved by the secretary to that Board, they cannot but think that Parliament will look to the responsible heads of the Treasury as competent to deal with controversies between the heads of civil departments and the permanent officers of the Treasury, when those controversies relate to the establishments to be voted by the House of Commons.'[d]

The committee (in their third report) specially adverted to certain new rules for the organisation of the civil departments by which the clerical force in each office is divided into three classes:—(1) A comparatively small class of established clerks, with high salaries, fixed tenure, and pension, selected by open competition of a superior kind. (2) An intermediate class of established clerks, with lower salaries, but with fixed tenure and pension, also selected by open compe-

[d] Com. Pap. 1873, v. 7, p. 415.

Civil service expenditure.

tition, though of a lower standard. (3) A class of writers, paid by the hour or week, selected by the civil service commissioners after examination in reading, writing, and arithmetic, but without fixity of tenure, pension, or prospective advantages. The new rules have been condemned by some prominent and experienced officials, and the committee 'doubt the wisdom of the present arrangements,' although they refrain from recommending any alteration in them. Approving in the main of the competitive system for admission into the civil service, they feel the importance of a good system of promotion, under which men can be advanced to the higher grades, according to their fitness and merit. The committee also doubt the practicability of excluding any considerable number of *employés* from the benefits of superannuation, inasmuch as the advantages of superannuation in retaining trained officers in the service, in protecting the public from combinations, and as a means of enforcing discipline, are obvious.[e]

On June 17, 1873, the House of Commons appointed a select committee to enquire whether writers appointed before August 19, 1871, have suffered any wrong or injustice by the cessation of the system of a progressive rate of payment [pursuant to the new regulations enforced by the order in council of that date]. The committee reported on July 30 their 'opinion that a restoration of the system of a progressive rate of payment will best meet the requirements of justice, give contentment to the writers, and promote the efficiency of the public service.' The report was accompanied by minutes of evidence, and an appendix of illustrative documents.[f]

In 1874, the Disraeli administration determined

Com. Pap. 1873, v. 7, p. 415. *Ib.* v. 11, p. 1. For action of Govt. on this Rept., see Com. Pap. 1876, v. 50, p. 329.

upon the issue of a Treasury commission to enquire into the organisation of the civil service. It should be the duty of this commission to investigate the working of the system of competitive examinations, and to recommend any suitable modifications of the same; to consider the principle of transferring men from office to office; the possibility of grading the civil service as a whole, and of establishing uniform rates of pay in different departments; and the system of employing writers for temporary service.[g]

Civil Service Treasury Commission.

This commission (known as the 'Playfair Commission') was appointed on April 25, 1874. They presented a first report in January 1875, which, together with the minutes of evidence taken, and some subsequent correspondence on the subject with the chancellor of the exchequer, was laid before Parliament in February 1875. The report recommended a partial reorganisation of the lower and higher grades of the civil service, by the substitution of a larger number of clerks of the lower divisions for the clerks of the higher division; a modification of the present competitive system for first appointments, by permitting a choice to be made from a list of successful candidates; the introduction of the system of service pay, with extra 'duty pay' as a reward of special services; with proposals in regard to promotion by merit, transfers from office to office, staff appointments, and the great reduction of the class of 'writers.'[h] After the receipt of this report the Government instituted special enquiries into the mode in which the proposed reform would accommodate itself to the requirements of particular departments,[i] and invited the assistance of the commissioners in applying the principles they had recommended to the reorganisation of one of the large departments.[j]

Civil service organisation.

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[g] Hans. D v. 219, p. 70.
[h] Com. Pap. 1875, v. 23, p. 1.
[i] Hans. D. v. 223, p. 1447.
[j] *Ib.* p. 1958.

Civil Service Treasury Commission.

On March 19, 1875, Sir Charles Trevelyan gave important evidence before the commission in relation to the topics embraced in their first report, and especially as to the desirability of maintaining intact the principle of competitive examinations, and as to the proper mode of rendering the supervision of the Treasury over the public departments efficient and complete. This evidence is appended to the second report as Appendix F.

On May 14, 1875, the commission presented a second report, which relates to appointments in various offices requiring special and technical qualifications, viz., the British Museum, the Department of Science and Art, and the Public Record Office. The commissioners are of opinion that the plans recommended in their first report can be adapted to these establishments, and to appointments in other offices requiring special and technical qualifications, without material modification.[k]

The Civil Service Enquiry Commission presented a third (and final) report on July 23, 1875. It deals with the Inland Revenue and Customs departments, and recommends their reorganisation upon the principles advocated in the previous reports.[l]

On July 26 the chancellor of the exchequer informed the House of Commons that the interesting and suggestive questions raised in these reports would be carefully considered by the government during the recess.[m]

On February 12, 1876, an order in council was passed to give effect to the recommendations of the commission in regard to the staff for the lower division, or 'mechanical and routine' work of government offices consisting of 'writers,' of men and boy clerks, to be appointed after open competitive examinations before

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[k] Com. Pap. 1875, v. 23, p. 451. [l] *Ib.* v. 23, p. 569.
[m] Hans. D. v. 226, p. 46.

civil service commissioners, and was laid before Parliament.[o]

Civil Service Treasury Commission.

When 'the Civil Service Commission' was first created in 1855, it was a tentative department, and the commissioners received no salary. It was afterwards deemed expedient to make them salaried officers. Of late years the business of the department has greatly increased, and the delicacy and difficulty of the work have increased also. The commissioners have now to examine candidates for the whole civil service, and likewise candidates for first appointments in the army, for admission to the Royal Military Academy, for commissions in the Royal Marines, for appointments in the Indian civil service, the Indian civil engineers, the foreign service, together with candidates for employment as writers. The commissioners have likewise to conduct correspondence with the various public departments as to the character of the examinations and the questions to be put to candidates.[p]

In 1875, upon the death of Sir Edward Ryan, the late chief commissioner, the government appointed in his place a peer of Parliament, Lord Hampton, with an increased salary; and a third commissionership was again created, an office which had been in abeyance since the death of Sir E. Head in 1869. This gave rise to considerable opposition in the House of Commons, chiefly because of Lord Hampton's advanced age (76). But the government defended the appointment on the ground of special fitness, and because it was desirable that the commission should be represented in Parliament.[q]

Sale of government stores.

On May 5, 1874, the House of Commons appointed a select committee to enquire into the existing principles and practice regulating the purchase and sale of mate-

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[o] 20th Rep. Civ. Serv. Com. p. 16. Com. Pap. 1876, v. 22.

[p] Hans. D. v. 227, p. 1100.

[q] *Ib.* pp. 506, 1090.

rials and stores in the several public departments.[r] (This was in continuation of a similar enquiry in 1873.) The committee reported on July 3 on the several civil and military departments, but principally upon the management of the stationery department, and upon the mode of regulating and defraying the cost of printing for Parliament and for the public departments.

Salaries, &c., of public officers to be regulated by the Treasury,

As with the appointment and dismissal, so also in regard to the remuneration of public *employés*, it should be left to the government to determine the amount of pay to be allotted to all public servants, of whatever grade or position.[s] Those who serve the crown should look directly to the crown for compensation and reward. The salaries and allowances of all public servants, in every department of state (with the exception of those functionaries whose salaries are fixed by Act of Parliament),[t] are regulated by the Lords Commissioners of the Treasury, and determined by Treasury minutes. [When a salary is proposed to be fixed by a Bill before the House of Commons an amendment to increase the amount of salary, though unusual, and generally inexpedient, is not irregular.[u]] It is competent for the official head of every public department to recommend to the Treasury the alteration or increase of salaries to his own subordinates. But every such recommendation is subjected to the closest scrutiny by the Treasury, who possess supreme control in all financial matters, over every other branch of the public service.[v] The salaries and expenses of the public departments are annually submitted to the review of the House of Commons in the estimates, and a separate vote is taken for the amount required to defray the same, in each depart-

and voted by Parliament.

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[r] Com. Pap. 1874, v. 11, p. 339.

[s] Corresp. Will. IV. with Earl Grey, v. 1, pp. 134–152. Citing opinion of law officers of the crown.

[t] The officers of the two Houses of Parliament are also an exception to this rule; see *post*, pp. 660–664.

[u] Hans. D. v. 143, pp. 696–708; v. 186, p. 1164.

[v] Hans. D. v. 73, p. 1662. *Ib.* v. 117, p. 834. And see v. 2. On the Treasury.

ment. Appended to the estimate for every vote, a list is given of the different items of expenditure included therein; but, although it is within the power of the House of Commons, in committee of supply, to reduce any such vote by omitting the amount of any particular salary, or other item, this power is rarely exercised, and only upon grave and urgent considerations. It is perfectly competent for either House of Parliament, and more particularly for the House of Commons, to subject the conduct of the executive government towards the subordinate officers and servants of the crown to free enquiry and criticism; but there should be no attempt to interfere with the discretion of responsible ministers, in regulating the pay and allowances of public *employés*, except in cases where it is apparent that injustice and oppression have been exercised.

Salaries, &c.

On July 16, 1849, a motion was made in the House of Commons that a reduction of ten per cent. should be made in all salaries in the several departments of government, at home and abroad. The motion was opposed by ministers, and negatived on division.[w] The Treasury have always objected to dealing *en bloc* with departmental salaries.[x] When the government determine upon any reduction of official salaries, or emoluments, it is customary to respect existing interests.[y]

It is a rule in the public service that if an officer in the receipt of a pension receives new employment his pension is merged for the time being in the salary he receives.[z]

This law must not be evaded, by allowing colonial officers in receipt of imperial pensions, to draw part of their emoluments by way of gratuity, lest the offenders should incur severe penalties, and a withdrawal of their privileges to receive pensions out of the United Kingdom.[a]

When a man has been discharged from the public service upon retiring allowance and is afterwards found

Subject to recall.

[w] Hans. D. v. 107, pp. 408-451.

[x] *Ib.* v. 217, p. 1451; Com. Pap. 1873, v. 7, p. 662.

[y] *Ib.* v. 203, p. 1464; see Com. Pap. 1870, v. 54, p. 457, &c.

[z] *Ib.* v. 233, p. 814.

[a] Circular Desp. 1 Oct. 1878. N. Zeal. H. Jls. 1880. App. A. 2, p. 13.

capable of doing further work the Treasury may recall him, and if he does not answer to the recall he forfeits his pension.[b]

Pecuniary details should be left to the Treasury.

While every salary and the classification of every office is duly submitted in the annual estimates for the criticism and sanction of Parliament, it is the peculiar duty of the executive government and of the heads of the several departments to enter into the particular and minute considerations by which the rate of salaries, the annual increments, and the prospect of promotion are adjusted. This duty is discharged by the lords of the Treasury, and should be left to their unfettered discretion, inasmuch as they are responsible for the expenditure incurred in every branch of the public service.

Applications for increase of salary.

By a Treasury minute, dated February 26, 1866, which embodies the substance of regulations previously established in various departments of the civil service, it is provided that henceforth, as a general rule, no application in relation to increased pay or allowances (or for promotion, where such rests with the Treasury) will be entertained by the board unless transmitted through the head of the department to which the applicant belongs. But in the event of the departmental head refusing to forward any such application, the Treasury will receive it direct from the subordinate officer, if it be accompanied by a copy or statement of the refusal, and will determine whether or not the communication was one which should have been addressed to them.

This minute has originated in consequence of a practice recently introduced by *employés* in the civil service of memorialising the Treasury for increase of salary or improved departmental position through members of Parliament or other influential persons, or by direct petition to the board itself.

[b] Hans. D. v. 235, p. 1420.

In enforcing a stricter rule upon the service, the Treasury expressly disclaim the desire to debar any classes or individuals in the public service from making a respectful complaint of any matter of personal grievance. Still less do they intend to offer any obstacle to the most free action of members of the legislature who, on public grounds, may consider it their duty, whether in Parliament or by communications to the Treasury, to call attention to cases of grievance on the part of individuals, or who may think fit to enter upon the investigation of questions affecting the remuneration and other conditions of service under which classes of public officers are employed. It is equally the duty and the desire of the Treasury to afford every proper facility for such representations, and to give them their impartial attention.[c]

Political influence forbidden.

Nevertheless, a due regard to the principles of subordination, and the maintenance of proper relations between the various officers employed in the civil service, requires that for the future the Treasury should insist upon the observance of the rule which forbids subordinate officers from seeking advancement by means of pressure put upon the executive government by persons whose only knowledge of the circumstances of the case is derived from the *ex parte* representation of the applicants themselves.[d] And by a minute, dated May 2, 1867, and directed against the 'growing practice on the part of gentlemen employed in the public service to endeavour to influence the Treasury to accede to their applications for increase of salary or additional retiring allowance by means of the private solicitation of members of Parliament and other persons of political influence,' the lords of the Treasury declare that any such attempt hereafter will be treated

[c] For example, Hans. D. v. 193, p. 1407; v. 217, pp. 303-306. Com. Pap. 1873, v. 7, pp. 683-689. Pap. 1866, v. 39, p. 339; Hans. D. v. 181, p. 1806; v. 186, p. 391; v. 194, pp. 1586, 1595; v. 230, p. 251.

[d] Copy Treasury Minute, Com.

by them as an admission on the part of the applicant that his case is not good upon its merits, and it will be dealt with accordingly. On the other hand, any such representation which reaches them in the recognised way will receive their most careful consideration.[e]

Superannuation.

The system of superannuation allowances now existing in the civil service was first introduced early in the present century. Prior to that time provision for public officers on their retirement from active service was generally secured by methods which would now be considered as objectionable. The first Act for establishing a system of superannuations applicable to public officers generally was passed in 1810. In 1822, owing to the efforts of certain economical reformers, it was enacted that deductions should be made from the salaries of all civil servants as a contribution towards the superannuation fund. But this Act was repealed in 1824, and about 90,000*l.* which had been collected under it repaid to the contributors, upon the principle that such deductions were in violation of the terms on which public officers had entered the service. In 1828 a finance committee of the House of Commons recommended the re-adoption of deductions, but Parliament would not sanction this proposal, so far at least as existing interests were concerned. In 1829, however, a Treasury minute was passed—for the purpose of lessening prospectively the public charge for superannuations—by which deductions were imposed on the salaries of all civil servants to be thereinafter appointed. This was ratified by Parliament, and a new Act passed in 1834, authorising deductions towards the superannuation fund to be made from the salaries of all civil servants appointed after August 4, 1829, but exempting

[e] Com. Pap. 1867, v. 40, p. 323; Hans. D. v. 187, p. 1095; v. 193, p. 1088. In order to prevent the exercise of political influence for aggrandisement the numerous class of revenue officials were, until 1868, debarred from exercise of the franchise, and are still prohibited from taking active part at elections. *Ib.* v. 188, p. 1033; v. 194, p. 1586.

those who held office prior to that date from any such payment. The distinction thus made between two classes of civil servants, according as they received their first appointments before or after 1829, gave rise to much dissatisfaction. This, together with other anomalies and irregularities attending the working of the system, induced the Government in 1856 to appoint a commission to enquire into the operation of the Superannuation Act. The commissioners made an elaborate report in the following year, wherein they reviewed the whole question in all its bearings. Admitting that the first impression in entering on the enquiry had been favourable to the retention of deductions, they concluded, upon a careful review of the whole case, and 'with a view to public interests alone,' to recommend 'the total abolition of deductions for the purpose of superannuation, without any corresponding reduction in the salaries on which such deductions had been charged,' as being the only settlement of the question which was 'likely to be permanent and satisfactory.'[f] This recommendation was approved by Parliament, and an Act passed to repeal the section of the Act of 1834, under which the deductions had taken place (20 & 21 Vict. c. 37). In certain minor departments such as the lighthouse boards, the endowed schools board, and some branches of the police service, the *employés* contribute to an annuity fund, which is supplemented by government.[g] But there has been a growing disposition of late years to grant superannuation allowance in all public establishments, without requiring any deductions from salaries.[h]

Superannuation.

In 1859 another Act was passed to extend the operation of the Act of 1834 to all persons who had served in an established capacity in the permanent civil

[f] Com. Pap 1857. Sess. 2, v. 24, pp. 217–237.
[g] Third Rep. Civ. Serv. Exp. Com. Pap. 1873, v. 7, p. 624.
[h] *Ib.* p. 637.

service of the state, and who were not otherwise provided for by Parliament. The Act was necessary because several classes of public servants were omitted from the operation of the Act of 1834 in order to save them from becoming liable to the abatements, but these deductions having been abolished, it was deemed expedient to bring all civil departments under the provisions of the Superannuation Act.[i] But if a superannuated person afterwards is appointed to office in any part of the empire, his allowance is to be reduced by the amount of salary received for such service.[j] The total annual charge for civil pensions, annuities, and superannuation allowances in Great Britain, as estimated in 1869, exceeds 1,600,000*l.*[k] This includes annuities to the royal family and civil list pensions, but not half pay and pensions for military services.

The system of superannuation by deduction from the salaries having been tried and failed, it was decided in 1870, in order 'to promote economy and efficiency,' to diminish the number of established clerks as vacancies occur, and introduce 'men and boy writers on the ordinary footing of commercial clerks'[l]—*i.e.*, per diem allowances and without superannuation. But this system did not work well, and was afterwards considerably modified.[m]

In 1869, by the Act 32 & 33 Vict. 32, the Treasury were empowered in their discretion[n] to commute pensions to retired officers in the army and navy and clerks in the war and admiralty departments by payment of

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[i] Hans. D. v. 153, p. 354; 22 Vict. c. 26. 36 Vict. c. 23, and 39 & 40 Vict. c. 53.

[j] 35 Vict. c. 12.

[k] Com. Pap. 1868–9, v. 35, p. 1115. Civil Service Superannuations alone, including compensation allowances exceeds 1,100,000*l.* Com. Pap. 1873, v. 7, pp. 581, 841. For Imp. Acts, minutes and circulars issued under them, concerning pensions, and super^{n} allow^{s}. See Col. office list, 1870, p. 216.

[l] Hans. D. v. 203, p. 1247; v. 208, p. 1472; v. 206, p. 1384.

[m] See 1st, Rep. Cir. Serv. Inq. Com^{n}. Com. Pap. 1875, v. 23.

[n] Hans. D. v. 211, p. 283.

a capital sum of money, according to the estimated duration of life of the pension holder. Superannuation.

On April 18, 1871, a motion was made (by a private member) to resolve—'That it is expedient to extend the provisions of the Pensions Commutation Act, 1869, to all the departments of the civil service. In reply, the chancellor of the exchequer stated that ministers proposed to amend the said Act by taking away the privilege of commutation as far as regards pensions on retirement after sixty years of age, and upon a medical certificate, and by limiting the privilege to those who received compensatory pensions on account of the abolition or reorganisation of their office. With this restriction they proposed to extend the Act to the whole civil service. Satisfied with this concession the member withdrew his motion.[o] [The Bill was accordingly introduced and passed.[p] It was extended to telegraph clerks by Act 35 & 36 Vict. c. 83, and amended by Act 39 & 40 Vict. c. 73, and again amended in 1882 so as to admit of the commutation of a portion of a pension.] But the Treasury would object to commute a pension for anyone of whom there was a definite prospect of his being again employed in the public service.[q]

By the Superannuation Act of 1875, a special rate of pension is allowed to persons who have been in the civil service of the state in an 'unhealthy place.'

That all persons employed by the crown in the civil service of the United Kingdom are entitled to a superannuation allowance after a certain length of service is a principle which, ratified by Act of Parliament, is now 'universally admitted,'[r] provided only that he has reached the age when retirement upon a pension is allowable, or that an earlier retirement is justified

[o] Hans. D. v. 211, p. 1253–1259.
[p] 34 & 35 Vict. c. 36.
[q] Hans. D. v. 208, p. 1847.
[r] Hans. D. v. 177, p. 1907; 57 Geo. III. c. 65; extended by 4 & 5 Will. IV. c. 24.

by a medical certificate of incapacity for further service.[s] But if it should afterwards appear that a pension had been granted upon insufficient grounds, or at too high a rate, the lords of the Treasury would revise their decision and issue a new minute thereon.[t] All pensions and retiring allowances to public servants, although payable under statutable authority, are awarded by the lords of the Treasury, pursuant to regulations they are empowered to make from time to time for that purpose.

Pensions how granted.

The maximum pension to a retiring civil servant contemplated by the Superannuation Act is an amount equal to two-thirds of his salary. But by the 9th clause of the Act, pensions up to the full amount of the salary may be granted 'in cases where the services were of a peculiar and unusual degree of merit.'[u] But this power has been most sparingly exercised.[v]

Formerly pensions were granted at the discretion of the sovereign. But as great irregularities prevailed in the granting of pensions by the crown, it became necessary for Parliament to interpose its authority to regulate and restrict the exercise of this prerogative. Prior to the reign of Queen Anne, the crown had assumed the right of charging its hereditary revenues with pensions and annuities; and it had been held that the king had power in law to bind his successors. But, on the accession of Queen Anne, an Act was passed (1 Anne c. 7), forbidding the alienation of any portion of the hereditary revenues for any term beyond the life of the reigning monarch. On the accession of

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[s] Hans. D. 223, p. 1214. If the government should refuse to allow to a public officer his just claims under the Superannuation Act, he could apply to the court of Queen's Bench for a mandamus to compel the Treasury to pay him whatever he was entitled to receive, Hans. D. v. 180, p. 503; New Zealand, Leg. Coun. Jls. 1874, App. 2.

[t] Case of Sir W. Brown. Com. Pap. 1871, v. 37, p. 527.

[u] Hans. D. v. 217, pp, 1531, 1561.

[v] Case of Sir R. Hill. Com. Pap. 1864, v. 30, p. 610; v. 32, pp. 565, 569. *Ib.* 1873, v. 7, pp. 556, 571. *Ib.* 1875, v. 42, p. 675. *Ib.* 1877, v. 49, p. 587, &c.

George III. the land and other revenues of the crown, except the revenues of the duchies of Cornwall and Lancaster, were surrendered to Parliament, in exchange for a fixed civil list.

Civil list.

The 'Civil List' originated after the Revolution. It was then applied to defray the charge both of the royal household and of the civil offices of government, hence the term 'civil list.' It is now exclusively limited to the expenses of the sovereign and of the royal household.[w]

In the colonies, the term 'civil list' is applied to an enactment which withholds certain portions of the regular expenditure of the colony from being annually voted by the legislature. Under the Civil List Act, it is the duty of the Treasury, when required by the sovereign, to render assistance in the administration of the civil list, but the extent of such interference is expressly limited, and it can only be exercised for the benefit of the Queen.[x]

The pensions which had previously been paid out of these revenues were henceforth paid out of the civil list. There was no limit to the amount of pensions so long as the civil list could meet the demand; and no principle on which the grant of them was restrained, save the discretion of the crown and its advisers.[y]

Abuses of the pension list,

The abuses of the pension list, and the enormous facilities it afforded for corrupt purposes, frequently engaged the attention of Parliament during the reign of George III., and several Acts were passed at different periods to regulate the grant of pensions. The constitutional right of Parliament to investigate this matter, and to control the crown in respect to all payments of the civil list, was fully asserted and secured by Burke's Act in 1782,[z] this Act forbade the granting of secret pensions, upon the principle that Parliament had a right to be informed of every instance of the exercise

[w] May, Const. Hist. v. 1, c. iv.

[x] Mr. Gladstone, Hans. D. v. 208, p. 157.

[y] May, Const. Hist. v. 1, pp. 214, 215.

[z] 22 Geo. III. c. 82. And see debate on Sir C. W. Dilke's motion in regard to Civil List in Hans. D. v. 210, pp. 251–317. Fitzmaurice, Life of Lord Shelburne, v. 3, pp. 4, 80.

of this prerogative in order to ensure and enforce the responsibility of the ministers of the crown.[a] It further acknowledged the principle that pensions ought to be granted for two causes only; namely, as a royal bounty to persons in distress, or as a reward for desert.

Restrained by Parliament.

The interference of Parliament to restrain abuses in the grant of pensions continued during the succeeding reigns of George IV. and William IV.;[b] and finally, upon the accession of her present Majesty an Act was passed which limited the right of the crown to grant new pensions on the civil list to the sum of 1,200*l.* in each year; in addition to the pensions previously in force. A like amount is granted to her Majesty, for each and every successive year of her reign, cumulatively, for the bestowal of new pensions: such pensions, pursuant to a resolution of the House of Commons of February 18, 1834, to be awarded only to 'such persons as have just claims on the royal beneficence, or who, by their personal services to the crown, by the performance of duties to the public, or by their useful discoveries in science and attainments in literature and the arts, have merited the gracious consideration of their sovereign and the gratitude of their country.'[c] It is further required, that a list of the pensions granted shall be annually laid before Parliament, so as to enable the House of Commons to give its advice in regard to their bestowal, should it desire to do so.[d] The prime minister, and not the chancellor of the exchequer, is the responsible minister upon whose advice these pensions are conferred.[e]

Civil list pensions.

In 1861 complaint was made in the House of Commons that a

[a] Burke's Works, v. 3, pp. 304–307. And see Hans. D. v. 183, p. 423.

[b] May, Const. Hist. v. 1, pp. 217, 218; see Hans. D. v. 176, p. 358.

[c] 1 & 2 Vict. c. 2. Rep. of Com. on civil list pensions, Com. Pap. 1837–8, v. 23, pp. 55–59. *Ib.* 1868–9, v. 35, p. 1100.

[d] Com. Pap. 1861, v. 34, p. 237.

[e] Mir. of Parl. 1840, pp. 1327, 1347. In proof of difficulty of obtaining one of these pensions, see Veitch's Life of Sir Wm. Hamilton, pp. 284, 294: Quar. Rev. v. 130, p. 407.

literary pension had been conferred upon an undeserving person (Mr. Close, 'the Westmorland poet'). After due consideration of the case, Lord Palmerston (the premier) announced that the pension would be withdrawn.[f]

All pensions to come under cognisance of House of Commons

It is now recognised as a constitutional rule, that all pensions should be granted by Parliament, or out of funds set apart by Parliament for the purpose; and that the grant of pensions should invariably come under the cognisance of the House of Commons.[g] Even in the case of pensions and retiring allowances awarded, according to established practice, under the provisions of the Superannuation Acts, the money to defray the same must be annually voted by the House of Commons, although the faith of Parliament might be virtually considered as pledged to their continuance;[h] and it is only in extreme cases of grave misconduct, that a public officer is deprived of his ordinary right to a pension.[i]

Widows and orphans of civil servants;

By a Treasury minute dated December 22, 1873, the Treasury is empowered to make a compassionate allowance to widows and children in the event of the death of a civil servant, either directly or indirectly, from injuries received in the discharge of his duty: such annual allowance not to exceed ten-sixtieths of the husband's emoluments at the time of his death; and not to be less than 12*l.* per annum.[j] Otherwise neither the Superannuation nor the Pensions Acts confer upon the Treasury any authority to grant an allowance to the widows and families of deceased public officers in the civil service, howsoever strong the claim may be in any particular instance.[k] The only fund available for

[f] Hans. D. v. 162, p. 1375; v. 164, pp. 1402–1411. Also case of R. Young. *Ib.* v. 186, pp. 428, 454; v. 187, p. 256.

[g] Com. Pap. 1868–9, v. 35, pp. 1105–1109.

[h] Att.-Gen. Hans. D. v. 179, p. 1320. In the annual estimates the sum required under Superan. Acts is included in one vote, but names, &c., of all pensioners are appended thereto, and a list of the new pensions given.

[i] Hans. D. v. 235, p. 197.

[j] *Ib.* v. 218, p. 723; v. 226, p. 782. In regard to widows of labourers on public works who die from injuries received in execution of their duty, see *Ib.* v. 217, p. 312.

[k] Appropriation Accts. Com. Pap. 1875, v. 50.

such a purpose is the limited amount above mentioned, which is payable out of the civil list. This has been occasionally resorted to, in cases of peculiar hardship and desert.[1] And in some few instances the Treasury have taken upon themselves to grant compassionate allowances to widows of old servants, to save them from poverty.[m]

In rare and exceptional cases it has been customary to vote a yearly 'compassionate allowance' to widows or children of messengers and others in the lower grade of the civil service.

Of army and navy officers.

The widows and orphans of officers in the army and navy are entitled to pensions under certain regulations; but a similar bounty is not extended to the families of deceased adjutants and quartermasters of militia regiments, because these officers 'are not liable to the dangers of foreign service common to officers in the line.'[n]

By Act 56 Geo. III. c. 73, an annuity and benevolent fund was established on behalf of the widows and orphans of deceased officers and servants employed in the customs department; but this is purely a voluntary association, and is not assisted by the government, a small poundage on salaries of persons belonging to the society, which was originally authorised to be levied, having been abolished by Act 34 & 35 Vict. c. 103, sec. 20, which at the same time extended the operation of the fund to customs officers in Scotland and Ireland.[o]

Dr. Farr's valuable report on the Police Superannuation Funds[p] gives an account of the condition and prospects of the different superannuation funds in England and Wales.

In the Cape Colony, by the 'Public Service Widows' Pension

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[1] Hans. D. v. 179. p. 788. *Ib.* v. 217, p. 1471: Quar. Rev. v. 130, p. 414.

[m] 1st Rep. Com[e] Pub. Accts. Ev. p. 16. Com. Pap. 1876, v 8.

[n] Ld. Hartington, sec. of state for War, Hans. D. v. 183, p. 583.

[o] Phillips' Insurance case, L. T. Rep. N. S. v. 48, p. 81.

[p] Com. Pap. 1877, v. 15, p. 101.

Act,' 1874, a pension fund has been established for the benefit of widows of civil servants in that colony.

Summary

We have now completed our review of the royal prerogative in relation to office-holders. We have seen that the constitution has vested in the sovereign the right of appointing, controlling, remunerating, and dismissing all the public servants of the crown, with an exception in the case of certain functionaries whose tenure of office has been made that of 'good behaviour,' and who can only be dismissed from their employments upon an address of the two Houses of Parliament. By this means, the dignity and independence of the crown in the choice of its officers and the efficiency of the public service are secured. At the same time, adequate protection is afforded against abuse in the distribution of patronage and the control and dismissal of public *employés* by the responsibility of ministers to Parliament for the faithful exercise of this prerogative. Ministers are directly accountable for maintaining the public service in a proper state of efficiency, for selecting qualified persons to fill all subordinate offices under the crown, for awarding to such persons adequate remuneration, and for granting them protection against oppression or dismissal upon insufficient or unwarrantable grounds.

The authority that appoints to office is necessarily competent to dismiss any insufficient or untrustworthy servants. It is also the proper judge of their qualifications and of the remuneration they should receive. In all such matters Parliament ought not to interfere except in cases of manifest abuse or corruption, when it may be called upon to exercise its inquisitorial power.[q] Upon such occasions, however, the Houses of Parliament are constitutionally empowered to institute investigations, to declare their opinion as to the manner in which this

Right of Parliament to investigate

[q] Hans. D. v 212, p. 1148. And see precedents, *post*, pp. 668, &c.

and to advise the crown, in respect to this prerogative.

prerogative has been exercised in any particular instance, and, if need be, either to appeal to the crown to redress the grievance, or to proceed to remedy it themselves by an act of legislation.

It is also quite in accordance with constitutional usage for either House to address the crown or to record their opinion by resolution upon the existing state of the various public departments generally, and to advise the adoption of such reforms as may be calculated to increase the efficiency of administration.[r] But when fundamental changes are sought to be effected, whereby the crown would be deprived of any of its prerogative rights, or which transcend the scope of the lawful authority of an order in council, the proper course would be to bring in a Bill, embodying the substance of the proposed regulations, in order that the same may receive the concurrence of the whole legislature.[s] This was the plan pursued by Mr. Burke, in 1780, in carrying out his proposed economical reforms in the various departments of state.[t]

Control exercised by Parliament.

Another indirect but powerful influence possessed by Parliament in the control of the public service arises from the necessity for obtaining the sanction of the legislature to the supplies required for carrying on the government and defraying the salaries of all the public *employés*.[u] 'Thus without touching the prerogative itself its exercise is moderated. The effect of this check upon the exercise of the royal prerogative is, that the responsible ministers of the crown usually take care not to advise the sovereign to do any act requiring to be

[r] See Debates in Parl. on Motions for Administrative Reform. Hans. D. v. 138, pp. 2040–2133, 2154–2225, 2332. Proposed resolutions in regard to constitution of the Office of Works, submitted to the H. of C. in 1860, 1863, and 1866.

Hans. D. v. 139, pp. 695, 713. And see *ante*, concerning Minutes of Council on the Revised Code of Education.

[s] 22 Geo. III. c. 82. See other cases cited in Tomline's Law Dictionary, verbo *Office*, I.

[u] But see *ante*, p. 646.

supported by supplies, unless they believe that it will meet with the approbation of Parliament, especially that of the lower House, which is invested by the constitution with the principal control over the public purse.

Parliamentary addresses for contingent expenses

Moreover, by the usage of Parliament, it has always been considered allowable for either House to address the crown for funds to defray the salaries and other expenses of their own establishments, pursuant to regulations they may themselves adopt in this behalf; and each House is at liberty to determine the amount of remuneration to be allowed to their respective officers and servants, subject to the approval of the House of Commons in committee of supply.[v] The salaries of the principal officers are fixed by statute, and are paid out of the consolidated fund. Proposals for the increase of other salaries, and generally in regard to contingent expenses, must be approved by the commissioners for regulating the offices of the House of Commons, or on their behalf by the Speaker. But all such proposed expenditure for either House must be included in the estimates, and annually voted in committee of supply.[w] It is customary for the government, in their own discretion, to give effect to recommendations from committees of the House of Commons, in favour of appropriations for particular parliamentary services, by inserting items in the supply estimates, to the required amount, without waiting for any formal application from the House itself.[x]

Recommendations of committees.

Salaries, &c., of House of Lords.

The salaries and retiring allowances of the House of Lords establishment are fixed by the House itself,[y] but annually voted in committee of supply. The estimate for the House of Lords is now prepared by a committee

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[v] Com. Jour., June 29, 1836; Lords Jour. April 23, 1850. Hans. D. v. 218, p. 762.

[w] See *post*, p. 662.

[x] Estimates for Civ. Serv. 1862–3. Com. Pap 1862, v. 35.

[y] See Lords Jour. Aug. 27, 1835; Aug. 28, 1846; April 23 and July 30, 1850; Aug. 12, 1850; June 5, 1862.

Salaries. of the House and sent to the Treasury, by whom it is generally accepted without dispute.[a] The salaries and contingencies of the Lords are now included in the annual estimates and voted in supply. But the Lords are permitted to retain the right of paying for retired allowances of their officers out of the interest of the invested fee fund (1878). The fee fund of the House used ordinarily to suffice to pay all these demands; but when a deficiency occurred application was made by the clerk of the Parliament to the Treasury, to insert in the estimates a sufficient sum to cover the same. Formerly the Treasury had no knowledge or control over the fee fund of the House of Lords, or over the appropriation thereof. But in 1865 they suggested to the clerk of the Parliament the expediency of following the course adopted by the House of Commons, in regard to their fee fund, which is regularly paid over to the consolidated fund, and the charges upon the same included in the annual estimates, and voted by Parliament.

With the consent of the House of Lords in the civil service estimates for the year ending March 31, 1870, the salaries and expenses of the House of Lords' offices were, for the first time, included and brought under the control of the House of Commons. But the Treasury do not exercise any control over this expenditure. A portion of the fee fund was retained by the Lords in 1869, the interest of which is used to defray the retired allowances in the Lords' offices; but over 30,000*l.* is annually paid over to the Exchequer, as extra receipts. If this sum should prove insufficient, the balance is paid out of current fees.[b] Moreover, by the Act 29 & 30

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[a] Hans. D. v. 150, p. 1128; v. 202, p. 383.

[b] Report Com^e Pub. Acc. p. 47. Com. Pap. 1865, v. 10. Lords Pap. 1867-8, v. 30, p. 881; Civ. Serv. Est. 1878-9. Com. Pap. 1878, v. 53. See Hans, D. v. 177, p. 1123. *Ib.* v. 197, p. 1474; v. 202, p. 383; 3rd Rep. Civ. Serv. Exp. Com. Pap. 1873, v. 7. Ev. pp. 8, 34; Civ. Serv. Est. 1877-8, p. 61, *n.* Com. Pap. 1877 v. 57.

Vict. c. 39, §§ 33, 34, the Treasury were empowered to insist that the Lords' fee fund should be audited; and they have pledged themselves to the House of Commons to use the powers so conferred upon them.[c]

Applications for pensions by officers of the House of Lords are decided upon by the House itself; either directly, or upon a report from the select committee on the office of the clerk of the Parliament and usher of the Black Rod.[d]

Salaries, &c., of House of Commons.

The salaries, retiring allowances, and other disbursements on behalf of the establishment of the House of Commons have been heretofore regulated by reports of committees of the House, and are now settled by the commissioners appointed by statute[e] for regulating the offices of the House of Commons. The commissioners consist of the Speaker of the House of Commons, the chancellor of the exchequer, the secretaries of state, and certain other functionaries, being members of the House of Commons. Practically, the actual business of the board is transacted by Mr. Speaker. But the board is always convened when there is anything important to be done. The salaries of officers of the House of Commons have been fixed from time to time, pursuant to various reports from select committees of the House, from 1836 (up to which period they were paid by fees) to 1849. The establishment is divided into three branches or departments; which are under the Speaker, the clerk, and the serjeant-at-arms respectively. The head of each department is responsible for the items which concern his own department, whether they be for salaries or contingent expenses; and the entire pay-list

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[c] Hans. D. v. 187, p. 853.

[d] Mr. Birch's case. Hans. D. v. 97, p. 1. Mr. Edmunds' case, Lords Jour. v. 97, pp. 27-28. And see Mr. Gladstone's observations, in Hans. D. v. 177, p. 1370. The resolution granting Mr. Edmunds a pension was afterwards rescinded, on proof that he had been guilty of gross misconduct and malversation in office; Hans. D. v. 179, pp. 6-45.

[e] 52 Geo. III. c. 11; and 9 & 10 Vict. c. 77.

Salaries. is submitted to the Speaker, for his approval and signature. If the establishment requires to be varied, or increased, it is done by the permanent head of the department with the approval of the Speaker. The Treasury is not consulted, 'the Speaker's sanction would be sufficient: for instance, in 1865, there were two referees of private Bills put on, at 1,000*l.* each—that was done with the sanction of the Speaker.' By the Act 12 & 13 Vict. c. 72 the Speaker's audit in regard to all expenditure for the House of Commons is final. His order is the warrant to the Treasury to insert the amounts required to be voted by Parliament in the annual estimates. The Treasury adopt his return without examination, and include the amount in the estimates, because it concerns the internal economy of Parliament.[f] There are, however, certain items of expenditure, which are common to both Houses, that are settled by the Treasury: such as the sums to be allowed for the payment of witnesses attending committees, the allowance for a shorthand writer, and other miscellaneous charges of inconsiderable amount.

These payments are made by the Treasury, upon receiving an account of expenses, certified by the chairman of the select committee. If the charges are excessive they will be reduced or disallowed by the secretary of the Treasury.[g] The Commons committee on East India finances in 1873 desired to take evidence from India and requested the Treasury to sanction the expenditure of 10,000*l.* to defray the expenses of the witnesses. The Treasury replied that they did not feel justified in incurring such a large expenditure from imperial funds. They considered that the government, rather than the committee, ought to take the initiative in the matter. Whereupon the committee reported the matter to the House: and the government promised to consider it, and make some recommendation to Parliament on the subject.[h]

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[f] For comparative statement of salaries paid to principal officers of both Hos. of Parlt. in Gt. Britain, Canada, and the Australian Colonies, see Jls Leg. Coun. N. Zealand, 1877, Appx. No. 18.

[g] Com. Pap. 1847-8: v. 18, pt. 1, p. 111. Hans. D. v. 186, pp. 702, 1376. *Ib.* v. 212, p. 99.

[h] 2nd Rep. Com. East I. Fin. Com. Pap. 1873, v. 12; Hans. D. v. 215, p. 1874.

Retiring allowances to officers of the House of Commons are settled by the commissioners, on the basis of the Superannuation Acts.[i]

Speaker of House of Commons.

Upon the retirement of the Speaker of the House of Commons from the chair, it has been the invariable usage for the House to address the crown, that 'some signal mark of royal favour' may be conferred upon him, on his 'ceasing to hold the office of Speaker.' The response to this application, on the part of the crown, is by conferring a peerage upon the retiring Speaker, and by a message recommending the House to grant a suitable allowance for the support of the dignity.[j]

In 1817, on the retirement of Mr. Abbot from the speakership, the crown took the initiative in recommending provision for him, without waiting for an address from the House of Commons. This was resented as irregular and objectionable.[k]

Chaplain.

A similar practice formerly prevailed in the case of the chaplain to the House of Commons. After a short term of service it was customary to vote an address to the crown, soliciting the bestowal of church preferment upon this functionary. When Parliaments were of triennial duration, such addresses were uniformly passed after a service of about two years and a half. After they became septennial, it was usual to allow the Speaker two chaplains during each Parliament. Since 1837, owing to the diminution of church patronage in the gift of the crown, an annual salary has been voted to this officer in supply, in lieu of an application for preferment. But on May 31, 1838, the House having, prior to the change of system, addressed the crown in favour of three chaplains, and received favourable answers, though (for the reason above mentioned) no preferment had

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[i] See Rep. Com^s on Public Acc. Evid. 885, 977 &c., 1107 &c., 1121 &c. Com. Pap. 1865, v. 10. Rep. Com^s. Civ. Serv. Ex. Com. Pap. 1873, v. 7, Evid. p. 9. Hans. D. v. 177, p. 1123, *Ib.* v. 187, pp. 855, 1093; v. 197, p. 1478; v. 223, p. 1637.

[j] See *ante*, p. 592.

[k] Colchester Diary, v. 3, p. 1.

Chaplain. been conferred upon them, an address, recapitulating these circumstances, and reiterating the request, was agreed to. During the debate thereon, the home secretary (Lord John Russell), while defending the government from an intentional disregard of the wishes of the House, admitted that the House were justified in the course they had taken. But he afterwards observed 'that no address of the House can bind the crown in the disposal of its patronage, otherwise than according to the advice that may be given to it.'[l] In reply to the address her Majesty stated that she would 'take into her consideration in what manner the wishes of her faithful Commons could be carried into effect.'[m] In the course of the session, in committee of supply, an opinion being generally expressed in favour of a salary of 400*l.* a year being allowed to the chaplain, instead of 200*l.*, as heretofore, the chancellor of the exchequer promised to consider the matter. Accordingly, the estimates of the following year proposed to fix the salary at 400*l.*, which has ever since been the recognised allowance of this dignitary: and from that time the situation has been held as a permanent appointment.[n]

The foregoing particulars will show that the Houses of Parliament are at liberty to determine the remuneration to be allowed to their own officials, subject to the approval of the Treasury and the consent of the House of Commons.[o]

But while, as a rule, any direct interference by Parliament with the exercise of the prerogative of the crown, in the appointment, control, or dismissal of public servants, would be unconstitutional, unless under the

[l] Mir. of Parl. 1838, p. 4491.

[m] *Ib.* p. 4541.

[n] *Ib.* p. 5323; *Ib.* 1839, p. 416, Parkinson's Under Govt. p. 54.

[o] But a motion to declare the opinion of the House as to the extent of remuneration that ought to be allowed by the lords of the Treasury to Mr. Gurney for expenses of experiments in lighting the House of Commons, performed under the direction of a committee of the House, was pronounced by the Speaker to be informal, without the previous consent of the crown. Mir. of Parl. 1839, p. 5116.

peculiar circumstances already indicated, when it may become the duty of Parliament to tender advice upon the subject; it is nevertheless agreeable to usage, and of great public advantage,[p] for enquiries of ministers or desultory discussions to take place, in either House, in reference to the appointment and control of office-holders, in particular instances, when a direct motion on the subject would be objectionable. In this way opportunity is afforded to the administration to explain and defend the propriety of appointments, which may have been subjected to misrepresentations by the press or the public at large.

Enquiries of ministers.

On June 8, 1860, a member called the attention of the House of Commons (without making any motion) to the unfavourable position and inferior rate of pay of the civil assistants of the Ordnance Survey, compared with that of other public servants. His remarks were favourably received by the ministry, and the alleged grievance shown to have no real existence.[q] On March 4, 1861, enquiry was made of the ministry whether a person, recently appointed to a lucrative office, had received the same in acknowledgment of political services rendered by his father to the Liberal party. Lord Palmerston replied that he was 'unable to answer the question.'[r]

On May 2, 1862, a member having moved for and obtained a return of the services of the late barrack-master at Sheffield, and the retiring allowance granted to him, enquired why he and others similarly circumstanced had been allowed such a paltry pittance, when, the treasury had legal power to grant double the amount. In reply the secretary of the Treasury gave satisfactory explanations on the point.[s]

On April 2, 1869, the attention of the House was called to the appointment of a person as deputy-master of the mint, in apparent disregard of the civil service regulations; but satisfactory explanations were given by Mr Disraeli, and endorsed by Mr. Gladstone.[t]

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[p] Mr. Gladstone, Hans. D. v. 195, p. 40.

[q] *Ib.* v. 159, p. 568. See cases of Messrs. Barker & Jopp, *Ib.* v. 161, pp. 1217, 1220.

[r] *Ib.* v. 161, p. 1307.

[s] *Ib.* v. 166, p. 1183. See enquiry into Mr. Reed's case, as to his intended appointment to office in navy department over heads of others of long standing in service, *Ib.* v. 169, p. 572. This appointment afterwards gave rise to a motion for papers, in order 'to show to the country the facts connected therewith'; but, being opposed by government, the motion was negatived on division. *Ib.* v. 172, p. 1139.

[t] *Ib.* v. 195, pp. 31–41.

The following precedents will serve to explain and confirm the statements made in this section, and will explain under what circumstances parliamentary interference with this branch of the prerogative has heretofore taken place :—

I. As to the Appointment, Dismissal, or Control of Public Officers.

Precedents.

Mr. Spencer Perceval.

In 1807, in the interval between the resignation of the Grenville ministry and the accession to office of that of the Duke of Portland, it was rumoured that it was the intention of the king to offer the situation of chancellor of the duchy of Lancaster to Mr. Spencer Perceval, as an inducement to that eminent statesman to accept the responsible, but then insufficiently paid, office of chancellor of the exchequer in the new ministry. It had been heretofore the usual (though not invariable) custom to confer this office during pleasure, but as a means of compensating Mr. Perceval for relinquishing a lucrative profession for the service of the crown, the king proposed that he should hold it for life. Whereupon, on March 25, a member of the House of Commons moved an address to the king that he would be graciously pleased not to grant the office in question, 'or any other office not usually granted for life, for any other term than during pleasure.' During the discussion of this motion, Mr. Perceval took the opportunity of stating that it was true the king had made him this offer under the circumstances alleged, but that in order to prevent his Majesty from being fettered by any advice the House of Commons might give, he had resolved not to take advantage of the offer, but that he should be prepared to give his services to the crown in any political capacity notwithstanding. The motion for the address was supported by the leading members of the late administration, who took the ground that it was not a restriction upon the royal prerogative, but rather in the interest of the king, who should not be advised to give any places for life, but to keep them at his own disposal to reward his faithful servants from time to time. The address was agreed to by a large majority, and ordered to be presented to his Majesty by such members of the House as were of the privy council.[u] Agreeably to constitutional usage no reply was given by the king until after the formation of his new ministry, when he was pleased to send down the following answer : 'His Majesty acquaints his faithful Commons that he will take the subject of their address into his most serious consideration, and thinks it proper, at the same time, to inform them that he has

[u] Parl. D. v. 9, pp. 194–220.

thought it fit to provide that in a grant now to be made of the office of chancellor of the duchy of Lancaster, the office shall be conferred only during his royal pleasure. His Majesty assures his faithful Commons that, in the execution of the powers with which he is intrusted by law to grant certain offices for life, as in the exercise of all the prerogatives of his crown, his conduct will at all times be governed by an anxious attention to the public interest and welfare.'[v] 'Accordingly, Mr. Perceval, who had accepted the chancellorship of the exchequer, held the situation of chancellor of the duchy of Lancaster conjointly therewith, and also during pleasure.'[w] Since that time, this office, which may be regarded as a sinecure, has been always held by a member of the administration. Precedents.

In 1809, an enquiry was instituted by the House of Commons, upon the motion of Colonel Wardle, into the conduct of H.R.H. the Duke of York, the then commander-in-chief, who was charged with conniving at the corrupt sale of military commissions for the advantage of a woman by the name of Clarke, with whom he had had a dishonourable connection. The duke was defended by the chancellor of the exchequer, Mr. Perceval, who succeeded in carrying an amendment exculpating his royal highness from any guilty participation in Mrs. Clarke's proceedings. The duke, however, resigned his command of the army; whereupon the House resolved to proceed no further in the matter.[x] But two years afterwards, in May 1811, the duke was reappointed to office. This gave rise to a motion of censure which was submitted to the House of Commons on June 6. It was opposed by ministers, who pleaded his royal highness's fitness for the post, and his personal popularity with the army, and urged that the former proceedings of the House were not meant to operate as a perpetual disqualification, and did not, in fact, affix any stigma upon his character. The motion was accordingly negatived by a large majority.[y] The Duke of York.

Shortly before the meeting of Parliament, in 1812, the prince regent was advised to bestow upon his faithful servant, Colonel McMahon, the office of paymaster of widows' pensions. The abolition of this office, as being in the nature of a sinecure, had been recommended, so far back as 1783, by the commissioners for public accounts: and again by the commissioners of military enquiry, in 1808. The House of Commons resolved, in 1810, that it was expedient to abolish all sinecures, and at the same time 'to enable his Majesty to reward in a different way those who had filled high Colonel McMahon

[v] Com. Jour. v. 62, p. 305.

[w] Walpole's Life of Perceval, v. 1, p. 243.

[x] Parl. Deb. March 17 and 20, 1809. For particulars of this discreditable case, Walpole, Life of Perceval, v. 1, pp. 305 331. Colchester's Diary, v. 2, pp. 166–176. Le Marchant, Life Earl Spencer, c. vi.

[y] Le Marchant, Life of E. Spencer, p. 131.

Precedents.

effective civil offices.' Regarding Colonel McMahon as one whose services merited a public remuneration, and no other means having been provided by Parliament for the purpose, the ministry recommended that he should be appointed to the office in question; subject, however, to any decision that Parliament might come to for the reformation or abolition of the office. On January 9, 1812, the case was brought before the House of Commons, upon an amendment to postpone the motion to go into committee of supply, which, after a long debate, was negatived. On February 22, an amendment was submitted in committee of supply, to reduce the proposed grant for pensions to officers' widows, by the amount intended to be given as salary to Colonel McMahon. This also was negatived by a majority of 16. But upon the report of the resolutions of supply on the following day, the said amendment was again proposed and agreed to by a majority of 3.[z] This vote occasioned the abolition of the sinecure. The ministry then advised the appointment of Colonel McMahon to the office of keeper of the privy purse, and private secretary to the prince regent, with a salary to be defrayed by the Treasury. On April 14, Mr. Wynn moved for a copy of this appointment with a view to proposing a resolution of censure thereupon, on the ground that it was unconstitutional for the reigning monarch to have a private secretary. The motion was negatived by a large majority. But, on June 15, ministers informed the House that the prince regent had directed the salary of Colonel McMahon to be paid out of his privy purse. Whereupon all further opposition to the appointment ceased, and the gallant colonel was permitted to retain it until the day of his death.[a]

Lieut.-general of the ordnance.

In 1823, a motion was made by Mr. Hume in the House of Commons to condemn the filling up of a vacancy in the office of lieutenant-general of the ordnance, the said office having been declared by a royal commission to be unnecessary; an amendment was proposed for the appointment of a select committee to enquire into the duties of this office, and the expediency of abolishing it, which was negatived; after which the main question was negatived on division.[b] On March 29, 1830, in committee of supply on the ordnance estimates, Sir James Graham moved an amendment to reduce the vote to defray the ordnance salaries by the amount payable to the lieutenant-general, with a view to obtain the abolition of the said office; the amendment was negatived on division.[c] But in the following year the office was abolished.[d]

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[z] Parl. Deb. v. 21, pp. 114, 906, 931.

[a] See *ante*, p. 296.

[b] Parl. Deb. N.S. v. 8, pp. 110, 140–171.

[c] Mir. of Parl. 1830, pp. 1099–1113. See a similar motion on March 12, 1830, concerning the office of treasurer of the navy, which was negatived. *Ib.* p. 735. In 1835, pursuant to the Act 5 & 6 Will. IV. c. 35, this office was merged into that of paymaster-general.

[d] Haydn, Book of Dignities, p. 192.

Precedents.

Colonial secretary.

On April 16, 1832, an attempt was made to induce the House of Commons to interpose in a case where the colonial secretary (exercising the discretion vested in him by an Act of Parliament) had refused to grant an extension of leave of absence to a colonial clergyman. It was moved to resolve that, for certain reasons therein stated, it was the opinion of the House that this clergyman should be allowed an additional six months' leave, without prejudice to his salary. The under-secretary for the colonies opposed the motion; he showed that much indulgence had already been granted to this gentleman; and declared that it would be quite contrary to the practice of the House to interfere with the government in such a matter. Accordingly the motion was negatived.[e]

Commander-in-chief.

In 1837, Mr. Hume, being desirous of impugning the recent appointments of commander-in-chief and military secretary, proposed, on the consideration of the report from the committee of supply on the army estimates, an amendment to reduce the vote by the amount of the respective salaries of these officers; but Mr. Wynn (a very high authority) declared that this course was neither 'regular nor constitutional'; and, if successful, would lead, not to the substitution of one individual for another as commander-in-chief, but to the abolition of the office. He considered that the object the mover had in view amounted to an improper interference with the prerogative of the crown in appointments to office; adding, that 'it is undoubtedly the right of the House to allot what sum it may think proper for the expenses of the army: but if a charge is intended against any individual, it ought to be stated intelligibly and directly, in the form of an address.' The amendment was then put and negatived.[f]

Solicitor to Home Department.

In 1841, objection being taken in the House of Commons to the creation of a new office, that of solicitor to the Home Department, and a resolution proposed that such an office was unnecessary; it was urged, in reply, that the proper time to make the objection would be in committee of supply, when a vote would be submitted to defray the salary of the same. Accordingly, the motion was withdrawn, and the objection renewed in the debate on the estimates. But the government having promised to enquire into the matter, no further action took place.[g]

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[e] Mir. of Parl. 1831-2, p. 1863.

[f] *Ib.* 1837, p. 861. See a similar proceeding in 1868, to condemn a certain legal appointment made by one of the judges. Hans. D. v. 192, p. 497.

[g] *Ib.* 1841, p. 1509. *Ib.* 1841, sess. 2, p. 351. See also the case of the crown solicitor for the county of Meath. Hans. D. v. 159, p. 1533. And that of new offices created in 1869 and 1873. *Ib.* v. 195, p. 80; v. 216, p. 1287. The ordinary practice now is, to call in question new appointments by amendments to reduce votes in committee of supply on behalf of the same. *Ib.* v. 229, p. 1311.

Precedents.

Sir T. T——.

In 1838, upon the appointment of the Earl of Durham to the office of governor-general of Canada, his lordship was accompanied to Quebec by a gentleman named T——(afterwards Sir T. T——), who had been convicted of adultery several years previously, but had since filled situations of honour and responsibility. In consequence of his high legal attainments and general ability, Lord Durham appointed Mr. T—— as one of his secretaries, and gave him a seat in the executive council. When his lordship's appointments generally came under review by the home government, they were all approved of with the exception of that of Mr. T——. Meanwhile enquiry had been made in the House of Lords, whether it was true that this individual had been appointed to an office by Lord Durham. At first it was denied by the government, but when it was clear from the Canadian journals that such an appointment had taken place, the government declared that they had received the intelligence 'with surprise and regret.'[h] Subsequently, the government remonstrated with Lord Durham for what he had done, but his lordship replied that he took the whole responsibility upon himself and would rather resign his own office than suffer it to be cancelled. Thus far had the correspondence proceeded—the government being unwilling 'to disturb Lord Durham's government by actually insisting' on the rescinding of this appointment—when more serious events occurred in Canada, which led to the retirement of Lord Durham from his post. Mr. T—— accompanied his lordship home. But the matter was not allowed to drop here. The question was again brought under notice of the House of Lords after the Earl of Durham had resumed his seat in that assembly in 1839,[i] and a motion was made for an address to the crown for correspondence on the subject. Upon that motion the foregoing explanations took place: and the prime minister (Lord Melbourne) having stated that the correspondence in question had been principally private and unofficial, the mover expressed himself satisfied with the regret expressed on the part of the government that such an objectionable appointment should have been made, and withdrew his motion.'[j]

Sir P. Maitland.

On August 13, 1839, a motion in the House of Lords for the production (with other papers) of a letter from Sir Peregrine Maitland, tendering his resignation of the command of the Madras army, and of his seat in the Indian Council, was objected to by the administration, because there was no charge against the 'character and conduct' of that officer, and nothing which called for a vindication of either. Whereupon the mover consented not to press his motion, so far as this letter was concerned.[k]

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[h] Mir. of Parl. 1838, pp. 5181, 5517.
[i] *Ib.* 1839, p. 307.
[j] *Ib.* pp. 353–359.
[k] Ib. p. 4976.

Precedents.

Mr Heathcote.

In 1844, a petition having been presented to the House of Commons from a Mr. Heathcote, complaining of his dismissal, by the secretary of state, from the office of sub-inspector of factories, upon a false charge, founded upon misapprehension, it was moved that the petition be taken into consideration. The mover admitted 'that in most cases it was inexpedient for the House to interfere with the exercise of that discretionary power which must be possessed by every government over its subordinate officers,' and that in his opinion, 'the only cases to justify the interference were when the head of the department did not seem to have been in possession of the facts of the case, or that he had laboured under some misapprehension.'[l] The home secretary (Sir James Graham) opposed the motion; giving, however, explanations of the matter complained of, while at the same time protesting against the House being 'converted into a court of appeal against the executive: for if he were to be responsible for the duties that he performed, he must exercise them according to his own conscience and judgment with reference to the dismissal of officers who held their offices during pleasure, and with whose public conduct he was dissatisfied.'[m] Whereupon the motion was negatived.

Patronage of Board of Admiralty.

On April 19, 1853, after the accession to office of the Aberdeen administration, the government acquiesced in a motion made by an independent member of the House of Commons, for the appointment of a select committee to 'enquire into the exercise of the influence and patronage of the Admiralty, in the dockyards, and public departments, connected with the several parliamentary boroughs,' it having been alleged that this patronage had been made use of, for political purposes, by persons officially connected with the Derby administration.[n] The committee reported to the House on May 23, with minutes of evidence in regard to the several branches of the enquiry. They showed that, prior to the year 1847, corrupt practices in regard to appointments and promotions to office were very prevalent in the dockyards; but that, on February 27, 1847, an Admiralty order was issued, in the form of a circular, insisting upon the introduction and maintenance of a system of promotion, to depend solely upon merit and efficiency. This was followed up, in 1849, by another circular to the same general effect, which was backed by a personal appeal from Sir Francis Baring, the then first lord of the Admiralty, to the superintendents and principal officers of the dockyards, that they would give him an assurance that they would not interfere in politics. These measures semed to have worked very successfully, But when the Derby ministry came into power, the circular of 1849 was cancelled, with a view to favour the interests

[l] Hans. D. v. 76, p 1023.
[m] *Ib.* pp. 1634. 1640.
[n] *Ib.* v. 126, pp. 33-122.

Precedents.

of the party in power; and though but few political appointments appear to have been made, they were sufficient in number to 'subvert the confidence of the men, and render nugatory all the solemn assurances of circulars issued by the Admiralty, to the effect that men should rise by merit, and not by political influence.' The committee imputed blame for these transactions principally to Mr. Stafford, the then secretary of the Admiralty, to whom the first lord, upon his accepting office, had given up 'all the civil patronage, excepting the master shipwrights, and one class of messengers, which he reserved for deserving sailors and marines.' Recently, the circular of 1849 was restored, and its provisions rendered more secure by being embodied in an order in council. The committee concluded with a recommendation that should the system under which promotions in the dockyards are now again regulated be hereafter altered, Parliament should be informed thereof as soon as possible.[o] On July 5, 1853, a motion was made in the House of Commons, that referring to said report and evidence, 'this House is of opinion that, during the administration of the late board of Admiralty, the patronage of dockyard promotions, and the influence of the Admiralty, were used and exercised for political purposes, to an extent, and in a manner calculated to reflect discredit upon that department of the government, and to impair the efficiency of the service.'[p] In order to get rid of this charge, an amendment, implicating 'every administration of the Admiralty' in a similar offence, was proposed. After a short discussion, a motion to adjourn the House was carried, and the debate was never again resumed.[q] On May 30, the dockyard committee were instructed by the House to consider the case of Lieutenant Engledue, R.N., who in 1840 had been struck off the list of lieutenants of the royal navy for an act of insurbordination. Upon several occasions, afterwards, at different times, Mr. Engledue memorialised the Board of Admiralty to restore him to his former position, but was invariably refused. However, on November 30, 1852, he again renewed his application, and on December 22 he was informed that he was at liberty to memorialise the Queen in council to be reinstated. This permission was given two days after the Derby ministry had announced that they only held office until their successors were appointed. The memorial was sent in, favourably entertained, and referred to the Admiralty. On January 4, 1853, the Queen's approval was given to the restoration of Mr. Engledue. On the 6th inst. before the transaction was quite completed, a new board of Admiralty was

Case of Lt. Engledue.

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[o] Report on Dockyard Appointments: Com. Pap. 1852-3, v. 25, pp. 3-14; Hans. D. v. 125, p. 595.

[p] Hans. D. v. 128, pp. 1290-1311.

[q] *Ib.* pp. 1321-1325. See, also in this connection, the Churchward case, which is described in another chapter, *post*, p. 772.

appointed. Nevertheless the appointment was confirmed. But soon afterwards papers in relation to this case were moved for in the House of Commons, and being transmitted, were referred to the committee on dockyard appointments, it having been alleged that political influence had been made use of to procure the restoration of Mr. Engledue to his former rank in the service, notwithstanding the repeated refusals of the Admiralty to reinstate him.[r] The committee carefully investigated the circumstances of the case, in view of which they reported, on July 26, their opinion 'that the restoration of Mr. Engledue to his former rank in the royal navy was not a judicious proceeding.' But they added, that notwithstanding their attention having been called to the peculiar time when the application was granted, 'they have not heard any evidence which shows that this favour was bestowed from any political or unworthy motives.'[s] Precedents.

In 1855, a motion was made in the House of Commons, for the appointment of a committee to enquire into 'the grounds and justification of' the removal from office of the Right Hon. T. F. Kennedy, a commissioner of woods and forests, and a privy councillor, who was dismissed from office by Mr. Gladstone, chancellor of the exchequer, because 'he could not serve the public with credit therein,' and had treated his subordinates improperly and unfairly, so that the government could not be responsible for his conduct.[t] The motion was opposed by Mr. Gladstone (though he had, meanwhile, retired from office) on the ground that it was 'entirely contrary to parliamentary usage and injurious to the public service,' and that 'no *primâ facie* ground had been established for it.'[u] Admitting the abstract right of the House to institute such an enquiry, in conformity with the resolution of 1784,[v] nevertheless 'he found that the practice of the House had been uniformly to decline enquiring into the removal of public servants, when the removal had taken place according to law, and according to the apparently conscientious judgment of those who, by law, were made responsible for the conduct of such public servants.'[w] Viewing the motion as intended 'to impugn his conduct while in office, in one of the most important functions belonging to a minister,' Mr. Gladstone declared that he should abstain from voting on it. Accordingly, after an elaborate speech, he withdrew.[x] The secretary of the Treasury (Mr. Wilson) defended the dismissal, and said, it would be impossible to carry on the work of government if the House were to assume a right to review every transaction of this kind, although Mr. T. F. Kennedy.

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[r] Hans. D. v. 126, p. 876.
[s] Com. Pap. 1852-3, v. 25, p. 471.
[t] Hans. D. v. 136, p. 1991.
[u] *Ib.* p. 2010.
[v] See *ante*, p. 416.
[w] Hans. D. v. 136, pp. 1998-2001.
[x] *Ib.* pp. 1992-2011.

Precedents.

if a *primâ facie* case of injustice was made out it ought not to be overlooked.'[y] Lord Palmerston acquitted Mr. Kennedy of any conduct reflecting on 'his honour, his veracity, or his character,' but nevertheless resisted the motion, as a dangerous precedent, and contended that 'a discretion must be left in the hands of the servants of the crown as to removing from office those whom they thought incompetent' for their duties: adding, that 'if the House were to establish as a precedent that any man removed from a situation was to appeal to his friends in the House of Commons, and obtain a verdict as to the propriety of his removal, there would be an end of all discipline in the service of the state.'[z] Satisfied with the acknowledgment that Mr. Kennedy's honour stood perfectly unimpeached, the mover consented to withdraw his motion.[a]

A discussion arose in the House of Commons on the case of Mr. Chisholm Anstey, who was removed from his office of attorney-general of Hong Kong for 'his violent temper and want of discretion' in his conduct to his superior the governor of the island, to whom he had shown 'an excess of personal animosity and want of respect.'[b] See also the debates in both Houses of Parliament, in 1863, upon the removal of two judges in the Ionian Islands, by the authority of the lord high commissioner, and with the sanction of the secretary of state for the Colonies. Pursuant to an address of the House of Lords of April 17, papers on this subject were laid upon the table; but as the reasons for the removal of these functionaries did not clearly appear from the same, further papers containing 'any charges of conduct inconsistent with their judicial office' were moved for in the House of Lords on July 9. This motion was opposed by the government, on the ground that it was 'a most dangerous precedent' to authorise an appeal to Parliament from acts of responsible ministers in the execution of the law, and to require the production of confidential communications from the high commissioner to his superiors in office, and of letters from other persons intended to be confidential, without their consent. Nevertheless, as the sense of the House was in favour of the motion, the government gave way, and allowed it to pass without a division. After the production of the papers, no further action was taken in the matter by either House.

Civil service commissioners.

In 1860, a motion for papers was made in the House of Commons, which involved an attempt to induce the House to review the decision of the civil service commissioners, in respect to a candidate rejected upon examination before them. The government protested against such an interference with public servants engaged in a judicial enquiry, as being unprecedented and unjustifiable.

[y] Hans. D. v. 136, p. 2029.
[z] *Ib.* p. 2031.
[a] *Ib.* p. 2032.
[b] *Ib.* v. 172, pp. 993–999.

'If,' it was said, 'it can be shown that the commissioners were not worthy of the confidence of the government, or of this House, that they act with unfairness, or are incompetent, from literary or other disqualifications, then let the House interfere by an address to the crown to remove them from their offices.' The motion was negatived.[c] Subsequently the House refused to direct these commissioners to publish certain information with their annual report, on the ground that they were not amenable to the jurisdiction of the House, but only to the crown itself.[d] Precedents.

On March 4, 1861, it was moved in the House of Lords, that a select committee be appointed to enquire into the circumstances attending the appointment and resignation of Mr. Turnbull to a place in the Record Office; but the motion was opposed by the government, and negatived.[e] Mr. Turnbull.

On July 15, 1861, it was moved in the House of Lords to resolve that it is desirable, without delay, to restore the consular authority at Mozambique, in order to aid in repressing the slave-trade on the eastern coast of Africa. [In the previous session the House had addressed the crown, requesting that a consul might be re-appointed at this place; but as yet the government had not done so.] The aforesaid motion was opposed by the under-secretary for foreign affairs, on the ground that it was an undue encroachment on the functions of the executive, and not a case in which Parliament should interfere. He added that the address last year had been carried by surprise, and because the ministry, not anticipating a division, had allowed their supporters to leave the House. After these explanations, the motion was withdrawn.[f] Consul at Mozambique.

A Bill, introduced by Mr. Whiteside, in 1865, to alter the constitution, &c. of the Irish Court of Chancery, contained a clause providing that certain judicial offices in the said court should be conferred upon persons at present holding other offices of high position. This was opposed by the attorney-general, who said that it would not be 'for the public advantage to set the example of naming in Acts of Parliament the persons who were to be appointed to particular posts about to be created, instead of leaving the appointments to the crown, acting under the guidance of its responsible advisers. He did not think it advisable that these appointments should be made in the House of Commons, because nothing could Irish Court of Chancery.

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[c] Hans. D. v. 158, pp. 892–907.

[d] *Ib.* p. 2083. And see *Ib.* v. 170, p. 23. See further, as to the interference of Parliament with Commissioners appointed by the crown to conduct an enquiry, *post*, vol. 2.

[e] *Ib.* v. 161, p. 1271. See also *Ib.* p. 2101. And see the case of Mr. Reed's appointment, *Ib.* v. 172, p. 1138.

[f] *Ib.* v. 164, p. 855. See a similar proceeding in the H. of C. in the case of the consulship at Pesth, *Ib.* p. 1001.

Precedents.

be more invidious than to invite personal discussions as to the fitness of individuals for particular offices.'[g] The Bill was shortly afterwards withdrawn.

On April 29, 1870, it was moved in the House of Commons that a select committee be appointed to enquire into and report on all the circumstances which led to the resignation by Colonel Boxer of the office he held in the royal laboratory. The government had laid a paper on this subject before the House; and they gave full explanations of the course pursued; but viewing this motion as an attack on the War Department, they gave it 'an uncompromising opposition.' After debate, the motion was withdrawn.

On May 13, 1870, a resolution was proposed in the House of Commons, censuring the 'abrupt discontinuance' of the services of Mr. Barry, the architect hitherto employed at the Houses of Parliament, and declaring the same to have been an uncalled-for proceeding, and of doubtful expediency. The action of government was explained and defended by the first commissioner of works, who was specially responsible for Mr. Barry's dismissal. And Mr. Gladstone (the premier) pointed out the bearing of the motion on the principle of parliamentary responsibility, urging that nothing could more effectually relax and destroy the responsibility of ministers, and weaken the power of the House to control the public expenditure, than an attempt to intimate to the government the man whom they should employ. After a long debate, the motion was negatived, on a division.[h]

On February 15, 1872, a vote of censure upon government was proposed in the House of Lords for the proceedings taken in the appointment of Sir A. P. Collier to the judicial committee of the privy council, contrary to the spirit and intention of an Act passed in 1871.[i] After a long debate, an amendment, acquitting the government of blame, was carried, by a majority of one. On February 19, a vote of censure, in the same terms, was moved in the House of Commons, but a similar amendment was agreed to, by a majority of 27. An informal discussion took place in the House of Commons on March 8, 1872, upon the appointment of a clergyman to the crown living of Ewelme, under circumstances alleged to be at variance with the directions of an Act of Parliament.

On May 7, 1872, a vote of censure was moved in the House of Commons upon the government for the appointment of a non-resident to be lord-lieutenant of the county of Clare. After a long debate, the motion was negatived on division.

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[g] Hans. D. v. 177, p. 311. See also Mr. Walpole's observations on this point, *Ib.* v. 178, p. 525. And see *Ib.* v. 184, p. 526. And *ante*, p. 143.

[h] *Ib.* v. 201, pp. 670-729.

[i] Com. Pap. 1872, v. 50, p. 209. &c.

II As to the Remuneration of Public Employés.

Precedents.

Pensions.

On May 20, 1828, a motion was made in the House of Commons for a return of pensions granted on the English Civil List; but the motion was opposed by the ministry, on the ground that it was a principle to maintain inviolate the arrangements made with the crown respecting the civil list, which had been granted for the lifetime of the sovereign; and that unless the civil list shall become in such state as to render it necessary to apply to Parliament for assistance, or unless some special case of abuse is made out, the House have no right to enquire into details of this kind. On division, the motion was negatived.[j]

Official salaries.

The next case that will engage our attention under this head is one which occurred in 1830, when the Grey Ministry, immediately upon their appointment to office, took the initiative, and invited the House of Commons to appoint a committee to consider the amount of the salaries and emoluments payable to members of the administration holding seats in either House of Parliament; pledging themselves to abide by the recommendations of the committee on the subject. The chancellor of the exchequer (Lord Althorp), in moving for this committee, on December 9, stated that, while it was necessary, in point of form, that his name, as the mover, should be included, he hoped he would be excused for non-attendance, as the government were desirous that the committee should be exclusively composed of independent members, and altogether free from the suspicion of government influence.[k] [Two members of the late ministry were placed on the committee in order that they might be able to give details as to official business. They consented to attend for this purpose, but refused to act as ordinary members of the committee.[l]] His lordship cited a precedent for this course, in 1806, when the then chancellor of the exchequer, in appointing a committee to enquire into the state of the finances, selected no one to serve thereon who was an office-holder under the crown. Lord Althorp's committee reported on March 30, 1831, recommending very considerable reductions in official salaries, which were agreed to by the government, and the estimates for the ensuing year framed in accordance therewith. [The committee having recommended a reduction of the salary of the president of the board of control, which had been acquiesced in by the government, an independent member of the House of Commons, on September 29, 1831, moved a series of resolutions declaring the inexpediency of reducing this salary from 5,000*l.* per annum at which it had been fixed since 1810, to 3,500*l.* as

[j] Mir. of Parl. 1828. pp. 1585–1593. [k] Mir. of Parl. 1830, p. 439.
[l] *Ib.* pp. 519, 1285.

Precedents.

proposed by the committee. The government, however, opposed this motion, and the previous question was put thereon and negatived.[m] But in 1853 the salary was again raised to 5,000*l.* per annum, pursuant to the directions of the Act 16 & 17 Vict. c. 95, sec. 33, that this officer should be paid as much as other principal secretaries of state.] But it would appear that this enquiry was not regarded as sufficiently complete, for on April 12, 1850, on motion of Lord John Russell (the first lord of the treasury) a similar committee was appointed to consider of the diplomatic establishments, and the salaries and retiring allowances of the judges; although the proposal to refer the question of official salaries to a select committee, instead of determining upon them in council, with the experience and on the responsibility of the government, was strenuously opposed in the House. The only minister who sat upon this committee was the mover himself. The committee reported on July 25th, their recommendations in regard to official salaries were few and unimportant, as in their opinion the reductions made after the report of the committee in 1831, had gone far enough.[n] Upon the other branches of enquiry several important recommendations were made. The report was ordered to lie on the table and be printed. Before the next meeting of Parliament, the government undertook, upon their own responsibility, and according to their own judgment, to decide upon the manner in which they would deal with the various recommendations contained therein.[o]

On March 14, 1871, a motion was made in the House of Commons by an independent member, for the appointment of another committee to enquire into the salaries of members of Parliament holding office under the crown. It was urged that these salaries required to be equalised, and in some cases increased. But Mr. Gladstone (prime minister) having declared that no case had been made out to justify either augmentation or re-distribution of official salaries, the motion was negatived without a division.[p]

Lord Douglas.

On May 8, 1833, Mr. Hume moved an address to the crown, praying that the law-officers might be instructed to enquire into the validity of a pension or sinecure office granted by his late Majesty George IV. to Lord Douglas, contrary (as he alleged) to an agreement between the crown and Parliament: with the consent of the government the motion was agreed to.[q] Ministers afterwards intimated their intention to apply to the Court of Session to set aside the grant.[r]

Customs salaries.

On July 30, 1834, a petition was presented to the House of Commons from certain commissioners of customs, complaining of the

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[m] Mir. of Parl. 1813, pp. 2531-2539.
[n] Com. Pap. 1850, v. 15, p. 179.
[o] Hans. D. v. 116, p. 548.
[p] *Ib.* v. 204, pp. 1985-2003.
[q] Mir. of Parl. 1833, p. 1681.
[r] *Ib.* p. 3592.

reduction of their salaries under a treasury minute. The petitioners admitted that 'the question of salaries rests exclusively with the executive, and ought not to be brought before Parliament,' but they claimed that theirs was an exceptional case, and one of peculiar hardship. The chancellor of the exchequer characterised this as 'a most unusual and extraordinary proceeding,' but proceeded to show that the petitioners had no just grounds of complaint in the present instance. Members generally acknowledged 'the extreme inexpediency' of 'making the House a court of appeal in questions of this sort.' Even Mr. Hume, that staunch supporter of the people's rights, declared that he 'could not conceive anything more mischievous' than for the House to interfere where it had not a right to do so; and that the House was 'called upon to decide whether the legislature or the executive should determine what salaries are to be given to the servants of the public.' The petition was by leave withdrawn.[a]

Precedents.

Pension to King of Hanover.

On May 1, 1838, Mr. Hume moved for leave to bring in a Bill to suspend the payment of the annuity granted by Act of Parliament to H.R.H. the Duke of Cumberland, so long as he should continue king of Hanover, being of opinion that it was inexpedient and uncalled-for to continue a pension granted to an English prince after he had become an independent sovereign. The motion was opposed by the chancellor of exchequer (Mr. T. Spring Rice), on the ground that the annuity had been granted for the term of 'the natural life' of his royal highness, and that Parliament had no right to put a new construction on the grant, so as to deprive him of it. This view was sustained by the House, and the motion rejected. Similar motions were again proposed by Mr. Hume, on March 27, 1840, and on June 30, 1843, but were opposed by the ministry on the same grounds as before, and negatived by the House.

Sir John Newport.

On February 27, 1840, the attention of the House of Commons was directed to the grant of a pension to Sir John Newport, on his retirement from the office of comptroller of the exchequer. This was an office which was held under a statute 'during good behaviour.' It was wholly independent of the crown, and did not entitle the incumbent to receive a pension on his relinquishing office. It had been held by Sir John Newport for five years only, previous to which he had performed various public services during a long public career, but none of them of a nature that authorised him to claim a retiring allowance. The government, however, being desirous of rewarding Sir John's long and faithful services, determined upon his retirement from the comptrollership to allow him a pension of 1,000*l.* a year out of the royal bounty fund, which was set apart, under the Act 1 & 2 Vict. c. 2, to enable the crown to reward persons who had just claims

[a] Mir. of Parl. 1834, pp. 3101-3104.

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on the royal beneficence for discoveries in science, &c., or the performance of special duties to the crown or public. This proceeding was called in question in a series of resolutions submitted to the House, setting forth that the peculiar office lately held by Sir John Newport disqualified him from the receipt of a pension from the crown; that it was contrary to the spirit and intent of Parliament in respect to civil service pensions to allot him an annuity for public political services out of a fund set apart for the reward of merit of a different kind; and that, for these and other reasons set forth, the House deems it expedient to express its decided opinion that the pension in question *ought not* to be drawn into precedent. The ministry met these resolutions by an amendment, asserting the nature and value of Sir John Newport's services upon which his claim to a retiring allowance was based, and declaring that, on reviewing the whole case, 'this House is satisfied that the grant of a pension to a retired comptroller of the exchequer, in circumstances so peculiar, *cannot* be drawn into precedent.' The House, however, was not satisfied with the explanations and excuses of ministers, but passed the original resolutions by a majority of twenty-eight.[t]

Superannuation allowance.

In 1840, a retired public servant petitioned the House of Commons, complaining of the insufficiency of his superannuation allowance, and declaring that he was legally entitled to a larger amount. A motion to refer this petition to a committee was opposed by the chancellor of the exchequer, who explained the merits of the case, and said that 'it would have a very bad effect on the public service if the House should interfere with the retired allowances of public officers.' The motion was negatived on a division.[u]

Rev. Dr. Morrison.

On March 26, 1844, a motion was made in the House of Commons for an address to the Queen, requesting that a suitable provision might be made for the widow and children of the late Rev. Dr. Morrison, on account of the eminent public services in China of the doctor and of his eldest son, both deceased. The prime minister (Sir R. Peel) fully admitted the value of the services rendered to the country by the Morrisons, but declared that the rule in respect to pensions to civil servants could not be extended to this family, and that there was no other means available for the purpose; adding that 'the House should be exceedingly cautious how they established a precedent in such a case of special interference with the conduct of the executive government, and in some degree with the prerogative of the crown.' The motion was accordingly withdrawn.[v]

On April 8, 1862, the attention of the House of Commons was

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[t] Mir. of Parl. 1840, p. 1323.

[u] *Ib.* 1840, p. 1810.

[v] Hans. D. v. 73, p. 1581. See, also, a discussion in the H. of C. Hans. D. v. 161, pp. 938–946, on Feb. 26, 1861, on an address to the Queen respecting forage allowances to cavalry officers.

called to the case of the clerks and officers of the late Insolvent Debtors Court, whose interests had been injuriously affected by the operation of the Bankruptcy Act of 1861. The ministry stated that it was not their intention to introduce any measure for the relief of these persons, but that they would offer no objection to the reference to a select committee of any petition setting forth their claims; and that they would agree to carry out any recommendation from such committee as to the amount of compensation which should be awarded to these persons. Whereupon a select committee was appointed accordingly, which reported on July 9. Pursuant to this report, a Bill for the relief of these complainants was introduced, and passed into a law.[w]

Precedents.

Officers of Insolvent Debtors Court.

On July 22, 1862, Sir George Bowyer moved the House of Commons for the appointment of a committee to enquire into alleged grievances complained of in a petition from upwards of 1,500 persons in the post office department. The chancellor of the exchequer (Mr. Gladstone) opposed the motion, 'as being of a most dangerous character, not only to the good order of the post office department, but to the entire public service.' 'The question had been settled by competent authority, namely, the executive government.' 'If the House thought the executive government to blame, let them take the proper course and pronounce their censure upon them; but he was satisfied that no worse policy could be adopted than for the House to take into its own hands the management of the public services.' Sir S. Northcote (a leader of the opposition) 'entirely assented to this doctrine, that it was most mischievous for the House of Commons to take out of the hands of the government the details of arrangements made in the various departments.' The motion was accordingly withdrawn.[x]

Post Office *employés.*

On March 6, 1865, Mr. Ferrand (who represented a large dockyard constituency) called the attention of the House to the great inequality and inadequacy of the wages paid to men employed in the Royal Dockyards, with a view 'to elicit an expression of opinion by the House which would induce the Admiralty—who had hitherto refused redress—to take their most reasonable claims into consideration.' The alleged grievances were explained away by the Secretary to the Admiralty, who called upon the House not to countenance the principle of interference with the discretion of government in the remuneration of public servants, at the instigation of members whose constituents were in the receipt of wages from the public treasury. The subject was then dropped.[y]

Dockyard labourers.

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[w] 25 & 26 Vict. c. 99. See the case of Divorce Court proctors, *ante*, p. 637.

[x] Hans. D. v. 168, p. 672.

[y] *Ib.* v. 177, p. 1136. Also case of third class clerks in Admiralty, *Ib.* v. 196, p. 1621.

Precedents.

Customs officers.

On April 28, 1865, a motion was made in the House of Commons to refer a petition from certain merchants of Liverpool complaining of the inadequate remuneration of the out-door officers of Customs, to a select committee to enquire into the alleged grievances. The chancellor of the exchequer (Mr. Gladstone) admitted that if any public servant could complain of any grievance by reason of the acts of the government, 'it was the duty of the government to render an account of their proceedings to the House, and it would be perfectly within the rules of prudence to risk an enquiry by a committee.' Nevertheless, the executive government should be held responsible for the regulation and the pay of the public servants, and nothing would tend so much to the disorganisation of the public service, or do more to lower the character of the House of Commons, than any attempt to take this duty out of the hands of government. Upon an assurance that the grievance complained of should receive the attention of government, the motion for a committee was negatived on division.[z]

Postmasters.

On May 12, 1865, a motion was made in the House of Commons to declare the expediency and propriety of increasing the salaries of postmasters, upon whom additional labour had been imposed by the establishment of post office savings banks. The secretary of the treasury and the chancellor of the exchequer explained that the Government were considering all cases of hardship arising from this cause, and were dealing with them equitably; but that they were not prepared to introduce any wholesale and sweeping change in the present system. Whereupon the motion was withdrawn.[a]

Registrar of Leeds Bankruptcy Court.

On May 15, 1865, enquiry was made of the attorney-general as to the circumstances attending the resignation of Mr. H. S. Wilde of the office of registrar of the court of bankruptcy at Leeds, and the appointment of his successor, and in regard to the act of lord chancellor Westbury in sanctioning the grant of a retiring pension to Mr. Wilde, though his conduct in office had disentitled him to any such advantage.[b] On the following day, the papers connected with Mr. Wilde's resignation of office were ordered to be laid before the House,[c] and on May 19 were ordered to be printed. On May 23, with the consent of the government, and especially of the lord chancellor, who caused it to be stated that he courted enquiry into the matter, a select committee was appointed to enquire into all the circumstances attending Mr. Wilde's resignation of office, the grant to him of a pension, and the appointment of his successor. Subsequently it was agreed that this committee should be nominated

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[z] Hans. v. 178, p. 1205; and see *Ib.* v, 180. p. 671.

[a] *Ib.* D. v. 179, pp. 194-206. See case of civil officers of the royal engineers, *Ib.* v. 197, p. 134.

[b] *Ib.* v. 179, p. 293; and see p. 489.

[c] Com. Jour. May 16.

by the general committee of elections, and should consist of five ordinary members, and two additional members being lawyers, who should be empowered to examine witnesses and conduct the case on either side, but should not have a right to vote.[d] On June 22, the report of this committee was brought up, and ordered to lie upon the table, and to be printed. The report, which was accompanied by copious evidence, acquitted the lord chancellor of all charge but that of haste and want of caution in granting a pension to Mr. Wilde. Nevertheless the committee recorded their opinion, that the general impression created by the sudden retirement of Mr. Wilde, and the pecuniary transactions which took place between Mr. Bethell (the eldest son of the lord chancellor) and Mr. Welch, who was appointed to succeed Mr. Wilde, 'were calculated to excite the gravest suspicions,' and that their investigation had been 'highly desirable for the public interests.'[e] On July 3, a motion, to resolve that the conduct of the lord chancellor in reference to the appointments in the Leeds Bankruptcy Court and in the case of Leonard Edmunds,[f] which had been reported upon by a committee

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Mr. L. Edmunds.

[d] Hans. D. v. 179, pp. 781–785. The committee decided upon conducting their enquiry with closed doors. *Ib.* v. 180, p. 881.

[e] Rep. Com. Leeds Bankruptcy Court, p. x. Com. Pap. 1865, v. 9.

[f] On Feb. 14, 1865, Leonard Edmunds, reading clerk and clerk of committees of the House of Lords, petitioned the House for leave to resign his office, and for the grant of a retiring allowance. The petition was presented by the lord chancellor, upon whose motion the resignation was accepted, and the petition referred to the select committee on the office of the clerk of the Parliaments, &c. On Feb. 17, the lord chancellor acquainted the House that he had appointed his second son (the Hon. Slingsby Bethell), to the office vacated by Mr. Edmunds, which appointment was approved of by the House. On the same day, the committee reported in favour of allowing to Mr. Edmunds the usual retiring pension, which report was agreed to by the House on Feb. 24. On March 7, the lord chancellor, being moved thereto by various discreditable rumours which were afloat, informed the House of certain circumstances connected with the conduct of Mr. Edmunds while holding a situation in the patent office, and subsequently when in the employ of the House, which demanded investigation. Whereupon, on his lordship's motion, a select committee was appointed to enquire into all the circumstances connected with Mr. Edmund's resignation of both the said offices, and with the grant of a retiring pension to him by the House. This committee reported on May 2. On May 9, on motion of Lord Redesdale, a member of 'the pension committee,' a passage from the report of the committee of enquiry was read, which appeared to reflect upon the previous committee for recommending a pension to Mr. Edmunds, without duly considering the imputations upon his conduct. Lord Redesdale then moved two resolutions, to exonerate the 'pension committee' from all blame in the matter. After a long debate, the previous question was put thereon, and negatived; and the resolution of the House of Feb. 24, agreeing to the recommendation of the committee in favour of a retiring allowance of 800*l.* per annum to Mr. Edmunds, was rescinded. Before putting this motion to the vote, a petition was presented to the House from Mr. Edmunds that

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of the House of Lords, a copy of whose report had been laid before this House—was 'highly reprehensible, and calculated to throw discredit on the administration of the high offices of state,' was moved by Mr. Hunt: to this an amendment (of which no notice had been given) was proposed by the lord advocate, acquitting the lord chancellor from all charge except that of haste and want of caution in granting a pension to Mr. Wilde, but declaring the opinion of the House that some further check should be placed by law upon the grant of pensions to the holders of legal offices. Previous to the commencement of the debate, Mr. Bouverie had given notice that he should move, as an amendment to the main motion, to resolve, that this House, having considered the report of the committee on the Leeds Bankruptcy Court, and the evidence, &c., are of opinion that, while the evidence discloses the existence of corrupt practices with reference to the appointment of P. R. Welch to the office of registrar of the said court, they are satisfied that no imputation can fairly be made against the lord chancellor with regard to this appointment; but that such evidence and also that taken before the Lords' committee on the circumstances connected with the resignation by Mr. Edmunds of the offices held by him, 'show a laxity of practice and a want of caution with regard to the public interests on the part of the lord chancellor in sanctioning the grant of retiring pensions to public officers against whom grave charges were pending, which, in the opinion of this House, are calculated to discredit the administration of his great office.' The lord advocate's amendment was first proposed; but, although Mr. Bouverie's amendment was not technically before the House and could not be discussed until it should be moved, its terms were known, and generally preferred by those who took part in the debate, including Mr. Hunt, the mover of the main motion.[g] The question, 'that the words proposed to be left out [*i.e.* Mr. Hunt's motion] stand part of the question,' was therefore put and negatived without a division. On the question that the lord advocate's amendment be then added, Lord Palmerston (the premier) moved, that the debate be now adjourned. This was negatived on division by a majority of 14. Lord Palmerston thereupon agreed to accept this division as conclusive in favour of Mr. Bouverie's amendment. The lord advocate's amendment was accordingly put and negatived, and then Mr.

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he might be first heard, by counsel, in his defence; but Earl Granville (the leader of the House) said that he felt it impossible to accede to this request. For the final result of the proceedings instituted by government against Mr. Edmunds, and his unsuccessful attempt to induce the House of Lords to re-open the question, see Law Mag. N. S. v. 28, p. 374. Com. Pap. 1872, v. 5, p. 195, &c. Hans. D. v. 216, p. 963; v. 220, p. 1500.

[g] Hans. D. v. 180, pp. 1092, 1117.

Bouverie's amendment was agreed to without a further division. On the following day, Lord Palmerston announced that, owing to this vote, Lord Chancellor Westbury had tendered his resignation, which had been accepted, and that he would merely retain the seals for a few days for the convenience of public business.[h] On July 5, the lord chancellor informed the House of Lords of his resignation. He added that, had he followed his own judgment, he would have retired from office when the charges were first raised against him, as he felt that the holder of the Great Seal ought never to be in the position of an accused person. But he had been dissuaded from this step by the prime minister, who said it would not do to admit this as a principle of public conduct, for the consequence would be that whoever brought up an accusation would at once succeed in driving the lord chancellor from office. Since then he had repeatedly pressed his resignation upon Lord Palmerston, but without satisfying him that the time had come when it should be accepted, until after the vote of the House of Commons on July 3, which had determined him no longer to consent to retain office.[i] In the session of 1866 an Act was passed requiring the lord chancellor to transmit to the lords of the treasury all applications for superannuation allowances on retirement of which he may approve, from any officer connected with the court of chancery, or in bankruptcy or lunacy, or any of the superior courts of common law, and empowering the treasury to decide thereon.[j] This statute is intended to take away from the lord chancellor the absolute right which he had hitherto enjoyed, and to give to the treasury the power of determining upon the report of the lord chancellor the amount of pension to which any such officer is entitled by law upon his retirement.[k]

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On July 4, 1873, a resolution was carried, in the House of Commons, on division (against the Government) in favour of redressing the present inadequate scale of salaries of the civil servants in Ireland. Whereupon ministers undertook to appoint a departmental committee to enquire into this matter.[l]

On May 12, 1874, the House of Commons was moved to appoint a select committee to consider the salaries, &c., of the officers of the two Houses of Parliament, with a view to their being more equitably apportioned. The mover pointed out that salaries in the

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[h] Hans. D. p. 1163.

[i] *Ib.* p. 1174. On Feb, 13, 1866, the Attorney-General informed the House that, in accordance with the recommendation of the Leeds Bankruptcy Court Committee in the previous session, criminal informations had been filed against Mr. Welch and the Hon. R. Bethell for corrupt practices in obtaining, or attempting to obtain, a judicial appointment.

[j] 29 & 30 Vict. c. 68.

[k] Hans. D. v. 183, p. 1938.

[l] *Ib.* v. 216, p. 1860; v. 217, p. 149.

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Lords offices were relatively much higher than in the Commons offices. But the chancellor of the exchequer deprecated the motion as an objectionable interference with the discretion of the House of Lords, and the motion was negatived.[m]

On June 14, 1877, the attention of the House of Lords was called to a hardship resulting from the transfer of Mr. W. Woods from the treasury to the colonial office, whereby, through no fault of his own, his pecuniary interests had been injuriously affected. The colonial secretary agreed to lay before the House papers on this matter; but severely censured Mr. Woods for printing and circulating amongst members certain confidential minutes in relation to his case.[n]

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[m] Hans. D. v. 219, p. 184. [n] *Ib.* v. 234, p. 1753.

CHAPTER XVI.

PREROGATIVE IN REGARD TO SUPPLY AND TAXATION.

Prerogative in regard to supply and taxation.

We have next to consider the prerogative of the crown in regard to supply and taxation, and the constitutional rights of Parliament in reference thereto.

The true doctrine on this head has been briefly stated by May, in the following words: 'The crown, acting with the advice of its responsible ministers, being the executive power, is charged with the management of all the revenues of the country, and with all payments for the public service. The crown, therefore, in the first instance, makes known to the Commons the pecuniary necessities of the government, and the Commons grant such aids or supplies as are required to satisfy these demands; and provide by taxes, and by the appropriation of other sources of the public income, the ways and means to meet the supplies which are granted by them. Thus the crown demands money, the Commons grant it, and the Lords assent to the grant. But the Commons do not vote money unless it be required by the crown; nor impose or augment taxes unless they be necessary for meeting the supplies which they have voted, or are about to vote, and for supplying general deficiencies in the revenue. The crown has no concern in the nature or distribution of taxes; but the foundation of all parliamentary taxation is its necessity for the public service, as declared by the crown through its constitutional advisers.'[a]

[a] May. Parl. Prac. pp. 650, 651; ed. 1883. See also Mill, Rep. Gov. p. 90.

In entering upon a more detailed investigation of the relative functions of the Crown and of Parliament in the matter of supply, it is proposed to divide the subject into three parts, and to consider, first, the constitutional *restrictions* upon Parliament in respect to (*a*) supply and (*b*) taxation; secondly, in the following chapter, the rights and privileges of Parliament, and especially of the House of Commons, in the *grant* of money for the public service; and thirdly, in vol. ii., the *oversight* and *control* of the public expenditure.

I. (*a*) *The Restrictions upon Parliament in matters of Supply.*

No supply to be granted but on demand of the crown;

According to ancient constitutional doctrine and practice, no moneys can be voted by Parliament for any purpose whatsoever, except at the demand and upon the responsibility of ministers of the crown.[b]

In former times, when any aids and supplies were required for the public service, the crown made known its wants to the House of Commons by message; this message was taken into consideration by the Commons, and the necessary supplies were voted by that House, according to its discretion. This mode of procedure in obtaining grants of money admitted of no exception. It therefore left no opportunity to any private member to introduce any scheme of his own whereby any charges would be made upon the people. But in the beginning of the last century a specious evasion of this constitutional rule crept in. The wholesome system of exchequer control in the custody of public moneys—which afforded protection alike to the crown and to the Parliament against illegal appropriations—was made the occasion of attempts to induce the crown, by the

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[b] Hats. Prec. v. 3, p. 168. Hearn, Govt. of Eng. pp. 349-351. Gladstone's speeches, Hans D. v. 181, Mr. p. 1131; *Ib.* v. 182, p. 597.

exercise of parliamentary influence, to sanction expenditures that were extravagant and unjustifiable. Finding that there was generally a balance of public money remaining in the exchequer, as yet unappropriated to any specific service, there was a growing disposition on the part of private members to regard this money as available for any purpose they might be disposed to favour. Petitions were presented to the House from various persons claiming pecuniary assistance or relief; which, being often promoted by members who were friends to the parties, and carrying with them the appearance of justice or of charity, induced the House to approve, or at utmost to be indifferent to their success. By this means large sums were granted to private persons improvidently, and sometimes upon insufficient grounds.[c] In the year 1705 this abuse became so notorious, that early in the next session, on December 11, 1706, before any petitions of this sort could be again offered, the House resolved, 'That they would receive no petition for any sum of money relating to public service, but what is recommended from the crown.' This resolution was made a standing order on June 11, 1713, and amended, June 25, 1852, to bring it into conformity with existing practice, by the substitution of a new order to declare, 'That this House will receive no petition for any sum of money relating to public service, or proceed upon any motion for granting any money, but what is recommended from the crown.'[d]

or petitions for pecuniary relief received;

or motions for grant of money entertained;

The House was informed by a member of the petitions committee, on March 20, 1866, 'that there was hardly a meeting of that committee at which petitions were not rejected, on account

[c] Hats. Prec. v. 3, p. 242. Mr. Ayrton's speech on proposing the new supply order, on March 20, 1866. Hans. D. v. 182, p. 591.

[d] For cases illustrating the strictness with which the H. of C. adheres to this rule, see Mir. of Parl. 1837, p. 259. *Ib.* 1837–8, p. 2026; 1839, p. 123. The standing order of June, 1852, was extended to charges upon the Indian revenues, by standing order of July 21, 1856.

of their praying for a grant of public money, or some similar informality.[e]

The uniform practice of the House has construed this rule to extend to any motion which involves the expenditure of public money, even though it may not directly propose a grant.[f]

or reports of committees.

And although the House is not precluded from appointing a select committee to enquire into any alleged grievance or matter of complaint against the government,[g] it has been held that a select committee cannot recommend that public compensation should be made to individuals for losses incurred, unless the same had been previously sanctioned by the crown.[h]

In several similar instances committees have evaded the rule by the use of general terms in favour of the relief they desired to recommend.[i] But the rule does not apply to select committees on public questions, appointed at the instigation, or with the consent, of government. Such committees may recommend the adoption of anything within their order of reference, notwithstanding that their recommendations may involve the expenditure of money.[j]]

This is a striking proof of the strictness with which this rule is enforced; as the mere report of a committee, though entitled to respectful consideration, does not bind the House to anything, unless it be formally agreed to by the House itself.

But while the House of Commons has invariably maintained the principle embodied in the foregoing standing order, so far as it was directly applicable, the ingenuity of members has discovered a way of practi-

[e] Hans D. v. 182, p. 601.

[f] May, Parl. Prac. 1883, p. 652. The recommendation of the crown is signified either by a message under the sign-manual, or by a formal notification by a minister of the crown. Hans. D. v. 105, p. 471. 3 Hats. Prec. pp. 169, 196.

[g] Fourdrinier's Patent, Com. Jour. v. 92, p. 309. Mir. of Parl. 1837, p. 1888. Claims of J. Clare, Hans. D. v. 174, p. 1460. Baron de Bode's case, *post*, pp. 697 and 705.

[h] Fourdrinier's case, Com. Jour. June 15, 1837; and see Hans. D. v. 166, p. 710.

[i] May, Parl. Prac. ed. 1883, p. 652.

[j] Rep. Sel. Com. on Dockyards. Com. Pap. 1864, v. 8; and see *post*, p. 698.

cally evading it. Of late years it has become customary to permit the introduction of bills by private members which, though not professedly in the nature of money bills, do yet necessitate, to a greater or less extent, the imposition of new charges upon the people, the precise extent of which cannot always be estimated at the outset. These Bills have been either for the construction of certain public works, or for the establishment or encouragement of certain new institutions, or they have proposed to grant new salaries to officials to be appointed under the Bill, or to grant compensation or aid to individuals, or associations for various causes assigned. But whatever may be the precise object of these Bills, inasmuch as they establish grounds of expense, they are an evasion of the constitutional rule which forbids the grant of money by Parliament, except at the application of the crown. In order to admit of the proposed grant without a direct violation of constitutional practice, Bills of this description invariably contain a clause to the effect that the necessary expenses to be incurred thereby should be 'defrayed out of moneys to be hereafter voted by Parliament.' The facilities attending the introduction of such Bills has frequently induced ministers themselves to take advantage of this mode of obtaining the sanction of Parliament to their legislative measures. Moreover, under certain circumstances, and with a view to facilitate the progress of public business, Bills of this class have even been permitted to originate in the House of Lords.

Bills imposing public charges

Provided that any clauses which infringe upon the privileges of the Commons are formally struck out of the Bill before it is sent to that House. But for the sake of convenience, and to make the measure intelligible, such clauses may be either written, or printed in red ink, in the copy of the Bill which is sent down from the Lords; in which case they are understood not to form part of the Bill, but to be merely suggestions, to

Suggestions from the Lords.

Bills imposing public charges

be offered for the acceptance of the Commons in committee.[k]

While it is obvious that the introduction of such Bills by ministers of the crown is not open to the same objections as when they are brought in by private members, yet it is most desirable that measures of this description should be subjected to careful scrutiny, and that the probable expense they would entail should be duly estimated, and made known to the House by a responsible minister, before it is called upon to sanction them.[l] In 1862 two such Bills, brought in by ministers of the crown, were rejected by the House of Commons, on account of the excessive expenditure they would occasion.

have been productive of great abuse.

But where such Bills have originated with private members, they have, as a general rule, been productive of great abuse, by encouraging injudicious and extravagant expenditure. If the principle of the Bill obtains the sanction of Parliament, the faith of Parliament becomes pledged to the outlay involved, and ministers are obliged to include, in future estimates, distinct provision for the same; and when the particular grant that is required to carry out any such measure is brought forward in committee of supply, any objection to its principle is commonly met by the assertion that it is useless, if not unfair, to oppose it at this stage, inasmuch as Parliament has already agreed that the proposed expenditure ought to be incurred. So long as private members are permitted to initiate measures which involve the expenditure of public money without the previous consent of the crown, it would be in vain

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[k] See Rpt. of Joint Com. on Despatch of Business with Evidence. Com. Pap. 1868-9, v. 7. And proceedings on Divorce Court Bill. Hans. D. v. 160, pp. 1628, 1734, 1765.

[l] The Kensington Road Bill, and British Museum Bill, Smith, Parl. Rememb. 1862, pp. 25, 101. See the debate in the Commons, on the Public Offices (Site and Approaches) Bill, on March 7, 1865. See *post*, p. 699.

to expect an economical administration of the public funds. These considerations were brought under the notice of the House of Commons by a private member (Mr. Ayrton) on May 16, 1862, when, after a short debate upon the subject, the chancellor of the exchequer promised that it should receive the attention of government, and that hereafter a committee should be appointed to review the whole question, and to recommend rules to remedy the evils arising from this objectionable practice.[m]

The attention of the House was again directed to the injurious consequences of this practice in a speech of the chancellor of the exchequer, on May 22, 1865, in regard to a proposition emanating from a private member, to transfer an annual expenditure of upwards of two millions on behalf of the poor, from local to public revenues, and to provide that this enormous amount should be thenceforth defrayed 'out of moneys provided by Parliament,' instead of being chargeable upon parochial poor rates.[n]

No such committee having been proposed, the subject was again brought up by Mr. Ayrton, on March 20, 1866. After adverting to the consequences which had arisen from the introduction of this novel and unconstitutional practice, he proposed—in the interest of economy, and in order that 'the whole responsibility of increasing the public expenditure should be thrown upon her Majesty's ministers'—that 'The standing order of June 25, 1852, relating to applications for public money, be repealed, and, in lieu thereof, that this House will receive no petition for any sum relating to public service, or proceed upon any motion for a grant or charge upon the public revenue, whether payable out of the consolidated fund, *or out of moneys to be provided by Parliament*, unless recommended from the crown'; and that the further standing order of the same date, relating to public aids or charges upon the

Now standing orders to require the previous consent of the crown to such bills or motions

[m] Hans. D. v. 166, pp. 1839–1848. Gladstone's speech, *Ib.* v. 181, p.
[n] *Ib.* v. 179, pp. 665–696. Mr. 1132.

Bills imposing public charges.

people, be repealed, and that, in lieu thereof, it be resolved—'That if any motion be made in the House for any aid, grant, or charge upon the public revenue, whether payable out of the consolidated fund, or out of moneys to be provided by Parliament, or for any charge upon the people, the consideration and debate thereof shall not be presently entered upon, but shall be adjourned till such further day as the House shall think fit to appoint; and then it shall be referred to a committee of the whole House, before any resolution or vote of the House do pass therein.' The proposed new orders were thankfully accepted by the chancellor of the exchequer, on the part of government, approved of by experienced members, and agreed to by the House.[o]

Under these rules a Bill by which it is intended to authorise a charge upon the public revenues may be introduced upon motion, provided that the money clauses are printed in italics. Thus they form no part of the Bill, but are treated as blanks. Before they are discussed the Queen's recommendation must be signified, and a committee of the whole House appointed to consider, on a future day, the resolution authorising the charge.[p] But whilst private members are not precluded from introducing Bills of this description, it is obvious that it is most desirable that such legislation should, as a general rule, be initiated by ministers of the crown.[q]

Practice of House of Lords less stringent.

And here it may be noticed, that the practice of the House of Lords, in these particulars, is less stringent than that of the House of Commons. There is no rule or usage of the House of Lords to forbid the presentation, discussion, and reference to a committee of a petition for pecuniary redress or compensation; or for

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[o] Hans. D. v. 182, pp. 591-603. Notwithstanding the increased stringency of these new orders, the ingenuity of members has succeeded in evading them by a form of motion not directly contrary to the words of the standing order. See Hans. D. v 209, pp. 1966, 1996.

[p] The Speaker, Hans. D. v. 209, p. 1952.

[q] Hans. D. v. 218, p. 590; also *Ib.* v. 220, p. 854.

the expenditure of public money in the construction of particular public works, or for grants of money to particular institutions.[r] And although the House of Lords have no right to initiate measures of taxation, or propositions for increasing the pecuniary burdens of the people, yet they are not constitutionally debarred from instituting enquiries, by their own committees, into financial matters, or into questions which involve the expenditure of public money.[s] From 1691 to 1703 a great controversy prevailed between the two Houses as to the right of the Lords to institute enquiries into the public accounts. The Lords stoutly maintained that they had a right to take cognisance originally of public accounts, whilst the Commons denied that there was any utility in such enquiries.[t] The consent of the Lords is indispensable to every legislative measure, whether of supply or otherwise, and it is desirable that they should be prepared, by full investigation and free enquiry, to give or withhold their assent intelligently.[u] The House of Lords are competent, moreover, to recommend questions involving the expenditure of money to the consideration of the crown; but such a recommendation must be couched in general terms.

Controversy as to right of the Lords to enquire into expenditure.

Thus, on August 4, 1842, a select committee of the House of Lords on the ventilation of the new Houses of Parliament, recommended that a sum of 86,000*l.* should be provided to carry out a plan proposed for that object.[v]

In 1852 the House of Lords appointed a select committee to enquire into the claims of Baron de Bode for pecuniary relief, in respect to a certain claim against the government as set forth in a

Precedents.

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[r] Baron de Bode's case, *infra*, p. 705. Hans. D. v. 173, p. 1622; v. 174, p. 962.

[s] See May's Parl. Prac. ed. 1883, p. 647. Lords' Committees were appointed in 1847, to enquire into the receipts and charges of the post office, and into the manner of keeping the accounts thereof, and in 1858, on spiritual destitution in populous places; and in 1860, on the levying and assessment of church rates.

[t] Hats. Prec. pp. 467–485, 495–516.

[u] See Palmer's case, *post*, p. 703. Also paper duties case, *post*, p. 809, where the relative position of the two Houses, in regard to questions of supply and taxation, is discussed.

[v] Lords Jour. v. 74, p. 509.

Recommendations of the Lords involving expenditure.

petition from the Baron, which had been referred to the committee. The committee reported favourably on the claim. In the following year Lord Lyndhurst moved a resolution, based upon this report, 'earnestly recommending this claim to the favourable consideration of the government.' The motion was negatived on its own merits, but its regularity was not disputed.[w] In 1860, a Lords committee upon floating breakwaters, &c. recommended 'that a sum not exceeding 10,000*l.* be placed at the disposal of the Admiralty,' to enable that department to test any plans for the suitable construction of such works.[x] On July 5, 1861, Lord Shaftesbury moved an address to the Queen, in favour of the extension, throughout India, of the best systems of irrigation and internal navigation. The previous question was proposed on this motion, on the ground that the government were themselves prepared to carry out the principle advocated, as fully as possible, but would consider 'the adoption of such an abstract resolution to be inconvenient.'[y]

In 1871 Mr. Gladstone claimed for the House of Lords an equal right with the House of Commons to enquire into the finances and financial administration of India. And though he abandoned his proposal for a joint committee of both Houses on the subject, because it did not meet with general acquiescence in the House of Commons, yet he protested against any attempt to narrow the deliberative functions of the Lords, except on grounds of broad constitutional principle. And subsequently the Duke of Argyll declared that, 'should any suggestion emanate from the Commons committee of which the government or the House of Lords might doubt the propriety, it would be their lordships' duty to institute a full enquiry before passing any measure founded upon it.'[z]

On May 9, 1871, a peer moved for an address to her Majesty, on behalf of the widow of the late Captain Burgoyne, R.N., with a view to her relief from certain pecuniary liabilities incurred by the loss of the ship commanded by her husband. The question was debated on its merits, but ministers having stated that the presentation of the address could lead to no practical result, as it was not competent for the House of Lords to originate motions with regard to grants of money; also, that the matter was under consideration by government—the motion was withdrawn.[a]

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[w] Lords Jour. v. 84, pp. 221, 241. Hans. D. v. 122, p. 488; v. 129, p. 1097.

[x] *Ib.* v. 167, p. 232.

[y] *Ib.* v. 164, pp. 394, 401. And see a discussion in the H. of Lords, on June 30, 1865, upon a peer calling attention to the claims of naval captains on the reserved pay-list under certain orders in council. *Ib.* v. 180, p. 975.

[z] *Ib.* v. 204, pp. 776, 1162.

[a] *Ib.* v. 206, pp. 462–467. See also proposed address for measures to repress slave trade in Africa, *Ib.* v. 212, p. 1608.

Wise restraint imposed by the House of Commons upon themselves.

The House of Commons, in forbidding, by their standing orders and uniform practice interpreting the same, the reception of petitions for pecuniary aid, and the presentation of reports from select committees recommending the expenditure of public money, have voluntarily assumed a restraint which goes beyond the positive obligation of the constitutional rule that requires all grants of money by Parliament to be made only upon the application of the crown. Nevertheless, they have wisely imposed upon themselves this restriction, in order to guard against importunate demands from without, and as a check upon the too easy liberality of their own members. The responsibility of recommending applications for pecuniary redress or relief to the consideration of Parliament should rest solely upon the executive government, who are strictly accountable for every item of public expenditure, whose especial duty it is, in the interest of the taxpayer, to oppose all unnecessary outlay, and who possess peculiar facilities for investigating into the merits of all pecuniary claims.[b] And it is only a waste of time to encourage premature debates in Parliament upon questions involving a grant of money, whether for public or private purposes, before the attention of government has been directed to the merits of the application.

By a ruling of the Speaker of the House of Assembly of the Cape of Good Hope, on June 22, 1882, it was decided that a select committee cannot recommend a specific grant of land, any more than a grant of public money, without the recommendation of the crown.

Resolution or address of the House in favour of a particular expenditure.

Should any case arise wherein it may appear to be the duty of the House to point out to the government public charges which ought to be incurred, they have still undoubted authority to do so, either by the

[b] Clode, Mil. Forces of the Crown, v. 2, p. 186.

Resolutions and addresses on issue of public expenditure

adoption of a resolution, expressing an abstract opinion in favour of a proceeding which will necessitate a future grant of money, or by agreeing to address the crown to incur certain expenditure, with an assurance of their readiness to make good the same,—the House is free to approach the crown with their constitutional advice in this, as in any other matter of prerogative. An abstract resolution does not finally bind the House to make the grant, and it imposes upon the government the responsibility of either accepting or rejecting the recommendation. But this is a right which the House exercises, and should exercise, with very great reserve, and only under peculiar and exceptional circumstances. Moreover, the adoption of an abstract resolution, for the express purpose of evading a wholesome rule in matters affecting the public expenditure, should be discouraged as much as possible.[c]

to originate in Committee of Supply.

Addresses from the House of Commons to the crown, requesting an issue of public money for some particular purpose, with the assurance 'that this House will make good the same,' are required, by standing order, to originate in a committee of the whole house.[d] This 'ancient and truly constitutional method of expressing the desire of the House, that some public charge shall be incurred,' remains unimpaired, notwithstanding the increased restrictions imposed upon the initiation of money charges in 1866.[e] But such addresses are only justifiable when there is no reason to apprehend that the supposed advance would be disapproved of by the other House of Parliament, whose concurrence is

[c] See May (citing precedents), Parl. Prac. ed. 1883, p. 654. Hans. D. v. 197, p. 1807; v. 205, pp. 340, 663, 1871; v. 211, p. 1238. Also Mr. Gladstone's speech on Mr. Ayrton's motion, March 20, 1866. Hearn, Govt. of Eng. p. 350. Also *ante*, p. 411.

[d] May, Parl. Prac. ed. 1883, p. 691.

[e] Mr. Gladstone, Hans. D. v. 182, p. 598. Address concerning transit of Venus in 1874. Com. Jour. v. 124, p. 404. By the Brit. N. Am. Act, 1867, sec. 54, the Canadian H. of C. is debarred from adopting an address for the advance of public money without a previous recommendation from the governor-general.

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necessary to give legal effect to any measure of supply or appropriation. Addresses have generally been adopted upon occasions of urgency which have arisen after the committee of supply has closed its sittings—as, in order to submit to the crown a proposal to confer a pecuniary benefit on a particular person; or to show respect to the memory of some illustrious person lately deceased, by the erection of a monument to his honour; or for the purpose of obtaining the co-operation of the crown in a matter affecting the privileges of the House.[f]

When an address is objectionable.

This mode of obtaining the issue of money is improperly resorted to when it is used for the purpose of escaping the necessity for appealing to the House of Lords for their concurrence, or to compel the government, contrary to their own judgment, to incur expenditure at the mere request of the House of Commons. In such cases it is the duty of the ministry to interpose, and, by asserting the prerogative of the crown, to protect the privileges of the House of Lords from violation, and the public revenue from an unwarrantable outlay.

After the battle of Navarino, a private member succeeded in inducing the House of Commons, notwithstanding the opposition of the government, to pass an address to the king, that he would graciously consider the claims of the officers and men who fought in this engagement to head-money. These claims had been investigated by the government, and rejected on grounds of public policy; but after the adoption of this address, by a nearly unanimous vote, the government agreed to propose a grant for this purpose in committee of supply; reiterating, however, their conviction of its inexpediency.[g]

The Commons sometimes in favour of a larger grant than that recommended by the crown.

If a proposition be submitted to the House of Commons, on behalf of the crown, for a supply for a particular service, and an opinion should be generally expressed by the House in favour of a more liberal

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[f] 3 Hats. Prec. p. 178–180, *n*.

[g] Mir. Parl. 1834, pp. 2258, 2564, 2858. See also case of Chinese prize-money in 1845, but which was successfully resisted by government. Hans. D. v. 82, p. 681.

appropriation on this behalf than that which has been asked for by the government, while it is confessedly beyond the power of the House to vote a larger sum of its own accord, the ministry, in deference to the opinion of members, will sometimes agree to submit a motion for the increased amount suggested;[h] or will undertake to reconsider the matter, and to apply to Parliament for a further grant, at a future period, should it appear expedient so to do.

In 1838, the government proposed, in supply, a vote of 10,000*l.* for the relief of the distressed Poles. An opinion in favour of a larger amount was unanimously expressed by the committee, but it was admitted that constitutional usage forbade a motion to that effect being made, except by the ministry. The chancellor of the exchequer at first defended the smaller sum, but finally agreed to re-consider the question.[i] Accordingly, the estimates next year included an additional sum of 15,000*l.* for this service.

Formal motions to take the sense of Parliament.

And in order to elicit an expression of parliamentary opinion upon some doubtful question involving pecuniary outlay, or to justify their own decision on some application for pecuniary aid, the ministry will occasionally communicate the formal consent of the crown to the discussion by the House of a motion concerning the same, without contemplating any further proceedings in the case. Or, a desultory debate may be permitted to take place in either House of Parliament upon a question of this kind, without any formal motion. Or, a motion may be proposed to express in general terms the opinion of the House upon the merits of the case,

[h] See case of the provision on behalf of the widow and children of Spencer Perceval, Walpole's Life of Perceval, v. 2, p. 303. The proposed grant for purchase of an annuity for the Duke of Wellington, when government recommended a vote of 300,000*l.*; but, in deference to the wishes of the House, consented to ask for 400,000*l.* for this purpose. (Hans. D. v. 27, p. 831.) See also case of Sir H. Havelock, *Ib.* v. 151, p. 2355. And that of Lady Mayo, *Ib.* v. 210, p. 1479; v. 212, p. 1576. But no grant recommended, salary proposed, or other item in estimates can be increased, except upon recommendation of the crown. May, Parl. Prac. ed. 1883, p. 673. But see *ante*, p. 646*n*, and *post*, p. 756. It may be reduced in committee of supply, or by the House itself, as in case of Prince Albert's annuity. Mir. of Parl. 1840, pp. 364, 380, 449.

[i] Mir. of Parl. 1838, p. 5875.

without directly asserting that any grant of money is required.[1] By such a course, the constitutional oversight of Parliament in all pecuniary transactions of the government may be exercised, consistently with a due regard for the prerogative of the crown.

The following precedents may serve to illustrate this branch of our enquiry. Precedents

The first case that will claim our notice is that of Mr. Palmer, which engaged the attention of Parliament for a number of years. Mr. Palmer.

This gentleman, originally the manager of a country theatre, conceived a plan for the improvement of postal communication throughout the kingdom, which, being communicated to Mr. Pitt, he appointed him comptroller-general of the post office, with full power to carry out his proposed reforms. These were so successful that in a few years the postal system was greatly benefited, and the revenues from the same largely increased. It was at first agreed to reward Mr. Palmer by a grant for life of two and a-half per cent. on a certain proportion of the increased net revenue, which would eventually have given him some 10,000*l.* per annum. But, after a time, Mr. Palmer's conduct in office became insubordinate and objectionable, and the government were obliged to dismiss him. In so doing, they cancelled the agreement under which the per-centage on the increased postal revenues had been awarded to him, and gave him, in lieu thereof, a pension of 3,000*l.* a-year. Not satisfied with this amount, and claiming the continuance for his lifetime of the per-centage in question, he appealed to the House of Commons, by petition, in the year 1807. Government allowed the king's recommendation to the petition to be signified, for the purpose of obtaining an enquiry into the case by a committee of the House. A favourable report thereon was made on July 13, but nothing further was done until the next session, when, by permission of the government (who continued, however, to oppose the claim), a Bill was introduced into the House of Commons to secure to Mr. Palmer his *future* per-centage on the net increased postal revenues.

[1] See cases of abstract resolutions of House upon pecuniary questions, May, ed. 1883, p. 654; the case of Sir A. B. King, in Mir. of Parl. 1831, pp. 223, 440, 477. While on this occasion the ministry successfully opposed a motion in favour of compensation to Sir A. B. King for loss of an office, it appears by estimates in following year, that they ultimately consented to his indemnification, by recommending an annual grant of 2,500*l.* for this purpose, which he received for several years. (Index, Com. Jour. 1820–37, p. 1057.) See the case of the losses of Mr. Speaker Manners Sutton by burning of the Houses of Parliament in 1837, Mir. of Parl. 1837-8, p. 402; the case of Fourdrinier's Patent, *Ib.* 1839, p. 2067; the case of the Distressed Letter Carriers, Hans. D. v. 124, p. 841.

Precedents

The Bill was passed, notwithstanding the opposition of the government, but was rejected in the House of Lords.[k] Meanwhile, a supply resolution, granting a certain sum to defray *arrears* of percentage claimed by Mr. Palmer, was reported, agreed to, and a Bill ordered thereupon. But as the Lords had thrown out the prospective Bill in favour of Mr. Palmer, it was proposed by the chancellor of the exchequer, and agreed to by the House, that the grant of arrears should not be included in the General Appropriation Act, but in a separate Bill, 'for the avowed purpose of affording to the Lords an opportunity of considering that grant distinctly from the other grants of the year.'[l] The bill was not proceeded with in that session, but Mr. Palmer's friends determined to persevere, and on May 21, 1811, they induced the House of Commons to pass an address to the prince regent, beseeching him to advance the sum of 54,000*l.* to Mr. Palmer, 'being the amount of arrears due to him out of the post-office revenues, and assuring his royal highness that the House will make good the same.' The House of Lords greatly resented this address, and a warm debate took place therein on the subject on the following day, but no proceedings were had. Two days after, one of the ministry assured the House of Lords that he should not recommend the prince regent to sanction a claim which their lordships considered to be unfounded.[m] Accordingly, the reply of his royal highness, as sent down to the House of Commons, stated, that 'it must at all times be the prince regent's desire to attend to the wishes of the House of Commons., and that he shall be ready to give effect to them in this instance whenever the means shall have been provided by Parliament': in other words, by a legislative Act, which should have received the concurrence of both Houses.[n] An attempt was made to induce the House to agree to a motion that this answer tended to create a misunderstanding between the crown and the Commons, but it was negatived by a large majority. The opposers of the motion allowed the existence of the right of addressing the crown for money, but justified the answer in this instance, because the regent must have known that what the Commons had resolved to be due as of right, had been denied to be due by the Lords after an enquiry into the facts of the case.[o] In the following session, with the formal consent of the crown, a further attempt was made to indemnify Mr. Palmer. A Bill was passed by the House of Commons for securing to him his future per-centage, and for granting nearly 80,000*l.* as arrears due. The

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[k] See Parl. Deb. v. 11. pp. 161–252, 959–973. Encyc. Brit. 9th ed. v. 19, p. 566.

[l] 3 Hats. 203 *n.* Parl. Deb. v. 11, pp. 1010–1042.

[m] *Ib.* v. 20, p. 296.

[n] *Ib.* pp. 347, 359.

[o] *Ib.* pp. 343–365. Walpole, Life of Perceval, v. 2, p. 215. Colchester Diary, v. 2, p. 332.

government, as heretofore, continued to oppose the measure, and it was rejected, upon the third reading, in the Lords. Next session a similar Bill was passed by the Commons, and rejected by the Lords. Finally, and in the same session, the matter was compromised by the introduction of another Bill, granting the sum of 50,000*l.* to Mr. Palmer, 'in consideration of public services performed by him,' to which Bill the Lords agreed, and it received the royal assent.[p] Precedents.

In reviewing the proceedings between the two Houses in this case, it is worthy of special remark that, whilst a large majority of the Commons were agreed upon the payment in full of Mr. Palmer's claims, a still greater number were in favour of proceeding by separate Bill, instead of inserting the amount to be granted in the general Appropriation Act, to the infringement of the rights of the Lords to judge specially of a grant that was not intended for the particular service of the year, and upon which there was reason to believe they entertained an adverse opinion.[q]

Baron Bode

Our next case will be that of the Baron de Bode, whose claims for pecuniary indemnification have been urged for upwards of forty years upon successive administrations, and still remain unsettled. The baron alleged that he was born a British subject, and originally possessed a large property in France, but which had been confiscated by the government of that country during the revolution. After the peace a treaty was made between France and Great Britain, under which a large sum of money was paid over to the British government for the purpose of indemnifying British subjects whose property had been confiscated by the French authorities at that period. Under this treaty the baron (and subsequently his son and heir) made various applications to the government, to the legal tribunals, and to both Houses of Parliament for payment of his claim, which had been pronounced invalid. In 1834, a committee of enquiry into the same was appointed by the House of Commons, notwithstanding the opposition of the ministry. Being unable to complete the investigation in that year, a motion was made in the following session for the re appointment of the committee. The motion was again opposed by the ministry, who declared it to be an attempt to convert the House into a court of appeal, and was negatived.[r] In 1852 Lord Lyndhurst induced the House of Lords to appoint a committee of enquiry into the claims of the baron, as set forth by him in a petition to that House, and which reported in favour of the same.[s] Whereupon, on

[p] Gen. Index, Com. Jour. 1801–1820, p. 709.

[q] See Corresp. on this point between Mr. Speaker Abbott, and Mr. S. Perceval in Colchester Diary, v 2, pp. 151–156 Also Com Pap. 1867–8, 48, pp. 633, 646–648, 677.

[r] Mir. of Parl. 1834, p 1438; 1835, p. 1902. In 1845 the case was argued before the Court of Queen's Bench. upon a petition of right, and decided against the baron. See 8. Q. B. Rep. 208.

[s] Hans D. v. 122, p. 478.

Precedents.

August 1, 1853, his lordship moved a resolution, based upon the report of the committee, 'earnestly recommending the petitioner's claim to the favourable consideration of her Majesty's government;' but after a long debate, the motion was negatived on the ground that it had already been decided by competent tribunals, and ought to be regarded as conclusively disposed of.[t] On June 20, 1854, a resolution was proposed in the House of Commons, 'that the national good faith requires that the just claims of the Baron de Bode, established after protracted investigations, should be satisfied.' The government, however, continued to deny the justice of the claim, and the motion was rejected.[u] At length on June 4, 1861, on a further petition from the baron, the House of Commons was again moved to appoint a committee to consider and report on this case; but the attorney-general re-argued the question, and declared that the petitioner was not in reality a British subject, and therefore had no claim upon the fund above mentioned. The chancellor of the exchequer urged that it would be cruel to the petitioner himself to do anything to keep alive his claim, and desired to know, if the committee reported favourably thereon, how such a report 'could justify the executive government in acting against an opinion of all the law advisers of the crown for the last thirty years?' But notwithstanding the opposition of government the committee was appointed.[v] The committee took voluminous evidence, but were unable to conclude their enquiry; they therefore, on August 1, reported to the House their proceedings and the evidence they had taken.[w] Since then nothing more has been done in Parliament in this case.

Danish claims.

Our next leading precedent is that which arose out of the much-litigated Danish claims. During the war with France in 1807, Great Britain, having reason to suspect that Denmark, although nominally a neutral power, was secretly favouring the designs of the French ruler, suddenly captured the Danish fleet while it was lying in the harbour of Copenhagen. By way of reprisal, the Danish government seized and confiscated the property of the British merchants who were trading in the Baltic sea. As Great Britain was not actually at war with Denmark at this time, it was contended that she should be answerable for the consequences of her act of aggression towards that kingdom, and should compensate the British merchants for their losses by the act of reprisal. This was acknowledged, and a large portion of these claims was paid by the government. But others, to a considerable amount, remained unliquidated. Accordingly, the merchants who conceived themselves aggrieved by the non-recognition of their claims, petitioned the House of Commons for indemni-

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[t] Hans. D. v. 129, p. 1097.
[u] *Ib.* v. 134, pp. 392 425.
[v] *Ib.* v. 163, pp. 571–597.
[w] Com. Pap. 1861, v. 11, p. 515.

Precedents.

fication. Whereupon, on May 24, 1838, an address to the crown was moved for an enquiry into the rest of these claims, with a view to their being satisfied. The government opposed the motion, on the ground that all the debts which by the law of nations were justly due had been paid by Great Britain, and that the remainder of the claims were untenable. Nevertheless, the motion for the address was carried.[x] After the vote had been taken, the chancellor of the exchequer declared that his opinion on the matter remained unaltered, and that 'considering the serious consequences which may be produced by such a vote, he begged to say that he undertook no further responsibility on the question.'[y] The government, however, upon further consideration, agreed to pay a portion of the remaining claims.[z] This being deemed insufficient, in the following session a similar address was moved and carried, against the government.[a] Whereupon the government consented to pay an additional number of the claims.[b] The claimants being still unsatisfied, a third address was passed on June 10, 1841, for the liquidation of the remainder, assuring her Majesty that the House would make good the same.[c] Upon this the government took a stand, and declared that they would not consent to any further expenditure on this account. The chancellor of the exchequer stated that the crown had no fund out of which a further payment could be made, and that it was therefore no use for the House to ask it to do so. Accordingly, on June 21, the following reply to the address was reported: That it must at all times be the most earnest desire of her Majesty to attend to the wishes of the House of Commons, and that she shall be ready to give effect to them in this instance, whenever the means shall have been provided *by Parliament.* No action was taken by the House upon this answer. But similar addresses were again proposed and negatived by the House on June 20, 1843, July 9, 1844, and June 26, 1851; after which no further application to Parliament on behalf of the Danish claimants was made until July 12, 1861, when the attention of the House of Commons was again called to the subject by a member, who recapitulated the arguments in favour of the claimants, but contented himself with laying the matter before the House without making any motion. The attorney-general and the chancellor of the exchequer resisted any renewed agitation of the question, the latter asserting that whereas the constitution required the concurrence of the executive government and of the House of Commons in any money appropriation, governments of various politics had repeatedly denied the justice of these claims, and for the last fifteen

[x] Mir. of Parl. 1838, p. 4247.
[y] *Ib* p. 4255.
[z] *Ib.* p. 5096.
[a] *Ib.* 1839, pp. 3051 3056.
[b] See *Ib.* pp. 4083, 4710; and 1841, p. 2250.
[c] *Ib.* 1841, p. 2249

Precedents.

years the House of Commons, though often appealed to, had equally repudiated the demand, it would be therefore wrong to give further encouragement to their discussion in Parliament. The subject was then dropped, and has not since been renewed.

Duke of Sussex.

On July 6, 1838, Mr. Gillon moved an address to the crown to consider the parliamentary grant of an annuity to H.R.H. the Duke of Sussex, 'with a view to recommend to the House some addition thereto.' The home secretary (Lord John Russell) resisted the motion on the ground that the matter was properly cognisable by the government, whose duty it was to advise an increase of the allowance if necessary, but who had not thought fit to do so. Sir R. Peel agreed in this doctrine, and asserted that the interference of the House would be 'an exceedingly dangerous precedent.' Accordingly the motion was negatived on division.[d]

Church accommodation in England.

On June 30, 1840, Sir R. H. Inglis moved for a committee to consider of an address to the crown, declaring the readiness of the House to make a grant to supply the deficient church accommodation throughout the kingdom; and on June 16, 1842, Mr. Ferrand moved for an address for the advance of one million pounds to relieve the distress prevailing in the manufacturing districts: both these motions, notwithstanding the opposition of government, were debated, but they were each negatived on division.

Railroads in Ireland.

On February 4, 1847, Lord George Bentinck moved for leave to bring in a Bill to raise a loan of sixteen million pounds, to encourage the construction of railroads in Ireland, and to give prompt employment to the suffering poor in that country. Lord John Russell (the prime minister) opposed the Bill, but did not object to its introduction, understanding from the Speaker that, 'in point of form, no objection existed thereto provided it did not include those money clauses which would require a previous committee.'[e] It was afterwards stated, on the part of government, that the prerogative of the crown should not be made use of in any way 'to interfere with the full discussion of the measure.'[f] Accordingly the Bill proceeded to a second reading, when, on the motion of the chancellor of the exchequer, it was postponed 'for six months.'[g]

Captain Grant.

On July 22, 1862, the case of Captain Grant, who had rendered great benefits to the army by the introduction of an improved system of cooking, in barrack and in camp, was brought before the House of Commons on a motion that his services were 'entitled to recognition.' This was considered by the government, and was in fact intended, to be equivalent to a recommendation for a grant of money to this officer; but the motion had been drawn up in these vague terms in order to

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[d] Mir. of Parl. 1838, p. 5306.
[e] Hans. D. v. 89, p. 808.
[f] *Ib.* p. 857.
[g] *Ib.* v. 90, p. 123.

admit of its being discussed without an infringement of the standing orders. The secretary of state for war objected to the motion as being an evasion of the standing orders, and also on its own merits, contending that the services of Captain Grant were not of a nature to justify a compensation from the public purse. On division, the motion was negatived, but only by a majority of one. A few days afterwards the secretary for war informed the House that, 'in consequence of the opinion expressed by a nearly equal division, the subject should be further investigated by the government.'[h] Being dissatisfied with the amount proposed to be given by the government to Captain Grant, a motion was made in the House of Commons on May 20, 1864, for an address to her Majesty to render him 'some suitable reward for his services;' but, after explanations from the under secretary for war. the motion was negatived on division.[i] Precedents.

In 1864, the government having determined from motives of economy to refrain from submitting to Parliament the usual vote (of about 46,000*l.*) to defray the cost of assembling the yeomanry cavalry for the accustomed period of six days' training on permanent duty, an amendment was moved on March 3 to the motion that the Speaker do leave the chair for the House to go into committee of supply on the army estimates, to resolve that the discontinuance of the drill would be detrimental to the efficiency of the force, inexpedient, and contrary to the recommendations of a departmental committee in 1861. The government opposed the motion, and contended that the efficiency of the force would be in no wise impaired by the temporary suspension of active training. On a division, the amendment was negatived by a majority of one. On May 5 following, the under secretary for war submitted to the committee of supply a vote of 39,200*l.* for the training of the yeomanry, alleging that since the aforesaid division the unexpected advices from New Zealand had enabled the government to effect a saving in the estimate on account of the war in that island, and they were therefore in a position to continue the usual grant on behalf of the yeomanry cavalry. On division, the vote was agreed to by a large majority.[j] Yeomanry cavalry.

I. (*b*) *The Restrictions upon Parliament in matters of Taxation.*

As no supply can be voted, so no taxes can be imposed upon the subject, by Parliament, for purposes of public revenue except upon the recommendation of the crown.[k] Accordingly any proposition for the levy of a Propositions concerning taxes should emanate from ministers.

[h] Hans. D. v. 168, p. 855.
[i] *Ib.* v. 175, p. 523.
[j] *Ib.* p. 45.
[k] See *post*, p. 786.

new tax or duty—or, for the increase of particular taxes,—excepting when the consideration of Parliament has been directed to the subject by the crown,—should emanate from the government.[l] But there is a distinction in this respect between imperial and local taxes. 'No private member is permitted to propose an imperial tax upon the people; it must proceed from a minister of the crown, or be in some other form declared to be necessary for the public service. But any member may bring in a Bill to impose heavy local burdens.'[m]

It should be observed, however, that the rule confining the initiation of all taxation to ministers of the crown is one of constitutional practice merely, and is not enforced by any standing order. Accordingly it has not been invariably insisted upon.[n] But if not positively forbidden, it is nevertheless highly inexpedient for a private member to introduce a measure affecting the public revenue. It is only when such measures are in the hands of ministers that legislation upon them can be successful.[o]

Precedents

On March 25, 1830, Mr. Poulett Thomson moved for the appointment of a committee to consider of revising and re-arranging the general system of taxation. The motion was strenuously and successfully opposed by Mr. Secretary Peel, as being an unprecedented attempt to deprive the ministers of the crown of one of their most important and peculiar functions. He remarked that proposals for the imposition of taxes belonged peculiarly to the crown; custom and sound policy having long ago devolved upon ministers the duty of submitting such questions to the consideration of Parliament.[p]

So, also, a motion on March 14, 1844, by a private member for a committee to consider of imposing a certain probate duty on real estate, was objected to by the Speaker and by Sir Robert Peel (the prime minister), on the ground that it ought not to be offered, except

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[l] Hans. D. v. 182, p. 592; v. 228, p. 1781. May, Parl. Prac. ed. 1883, p. 674

[m] Sir T. E. May's evidence before Joint Com^e. on Despatch of Business, Com. Pap. 1868-69, v. 7, p. 185. Hans. D. v. 215, p. 1676.

[n] Hans D. v. 115, pp. 660 668.

[o] *Ib.* v. 186, pp. 160, 1849.

[p] Mir. of Parl. 1830, p. 1032. See also similar motions, proposed and negatived, on March 26, 1833; on Aug. 7, 1848; on May 10, 1849, and on May 10, 1864.

in committee of ways and means, nor unless it could be shown that the public exigencies required it. After some debate the motion was withdrawn.[q]

In committee upon the Stamp Duties Bill, on August 4, 1859, a private member having proposed a clause to extend the probate duty upon property above the value of one million, the government consented to this impost. But, in point of form, it was considered necessary for a resolution to this effect to be proposed by the chancellor of the exchequer, in committee of ways and means, and afterwards introduced into the Bill.[r]

Enquiries of ministers concerning taxes.

It is also an invariable rule of constitutional practice that ministers are not required to answer questions involving an explanation of their intentions as to matters of taxation, until they may deem it expedient to the public interests to declare them.[s]

Amendments to government scheme of taxation.

The general question of a revision of a certain class of duties having been submitted to the House by the crown, it is perfectly competent to any member, in committee of ways and means, or in committee of the whole House upon the Customs or Inland Revenue Acts, to offer an amendment to a particular rate of duty proposed to be levied, either for the increase or diminution of the same: it may even be proposed to insert in the schedule a new rate of duty, provided it relates to an article which is already included therein.[t] And when the House resolves itself into a committee of ways and means to consider of raising supplies for the service of the current year, it is competent for any member to propose another scheme of taxation of equivalent amount, as a substitute for the government plan.[u] But a proposition made by the chancellor of the exchequer, in committee of ways and means, to require licenses to be taken out by brewers, cannot be amended, upon the motion of a private mem-

[q] Hans. D. v. 73, p. 1052.

[r] *Ib.* v. 155, p. 991. Com. Jour. v. 114, p. 348.

[s] Mir. of Parl. 1840, p. 1203. Hans. D. v. 158, p. 1879; v. 181, p. 963.

[t] Com. Jour. 1842, p. 367. Hans. D. v. 75, p. 1020; v. 218, p. 1041.

[u] May, Parl. Prac. ed. 1883, p. 675. And see a case on June 20, 1836, where a member proposed a reduction of the soap duties in lieu of the government scheme for a reduction of the duty on newspaper stamps. Mir. of Parl. 1836, p. 1963. Mr. Gladstone, Hans. D. v. 223, p. 380.

Amendments to taxation.

ber, by extending such licenses to other manufacturers, iron-masters, and coal-owners; inasmuch as this would be a new and distinct tax, and not the mere increase of a duty upon an article already recommended by government for taxation.[v]

On July 1, 1853, in committee of the whole House on the stamp duties, the opponents of a proposed rate of duty on advertisements succeeded in negativing the government proposition altogether.[w] And on May 12, 1862, in committee on the Customs and Inland Revenue Bill, so much thereof as imposed a tax for brewing beer in private houses was struck out; the government agreeing to the same, in deference to the wishes of the House.[x] And if a proposed tax which has been announced in the budget excites general dissatisfaction, it is not unusual for the government to acquaint the House, at a subsequent stage of proceeding, that they have resolved to abandon it.[y]

Precedents.

The budget submitted to the House of Commons by Mr. Lowe, chancellor of the exchequer on April 20, 1871, contained a proposal to impose a tax on matches, which though formally agreed to by the House on that day, afterwards excited general disapprobation in Parliament and in the country.[z] Accordingly, on April 25, Mr. Lowe informed the House that the measure with regard to matches would not be pressed, but that he should go on with an additional penny to the income tax, and legacy and probate duties.[a] However, on April 27, Mr. Gladstone announced that in view of the adverse opinions expressed in the House in regard to the financial propositions of ministers, they had resolved to withdraw the resolutions relating to the probate, succession and legacy duties, and instead thereof to propose an addition of twopence in the pound to the present rate of income tax.[b] On May 1, it was moved to resolve that it is inexpedient to increase the income tax to the extent proposed by government, but after a long debate the motion was negatived, ministers having declared that they 'had reached the

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[v] Hans. D. v. 202, p. 307.
[w] *Ib.* v. 128, p. 1129.
[x] *Ib.* v. 166, p. 1574.
[y] Proposed duties on club-houses, and on charities in 1863. Hans. D. v. 170, pp. 846, 1102, 1125, 1365, 1395.
[z] Hans. D. v. 205, pp. 1418, 1528, 1585 1659.
[a] *Ib.* p. 1685.
[b] *Ib.* p. 1780.

bottom of their resources,' and 'had no further plan,' and should, therefore, consider an adverse vote as equivalent to a vote of want of confidence.[c] This induced the House to give a reluctant consent to the new budget.[d] Accordingly on May 4, an attempt to reduce the addition to the income tax to fivepence instead of sixpence was negatived, on division.[e] On May 18, before going into committee on the Bill, Mr. Disraeli called attention to its remarkable features, in providing ways and means differing from those proposed in the original budget, and in proposing to provide for a deficiency of more than double the amount announced in the budget—but he did not take a division thereon.[f]

In vol. ii. precedents will be found, showing the extent to which the financial propositions of the government have been modified by the House of Commons since the reform of Parliament in 1832.

The introduction of a Bill or resolution for the reduction or repeal of an existing rate of taxation, whether for fiscal purposes or for the regulation of trade, is a parliamentary question, in which the crown has no direct concern.[g] The strict right of a private member to take the initiative in such a proceeding cannot therefore be denied, and has been acknowledged of late years by leading statesmen.[h] It is nevertheless in the highest degree inexpedient under parliamentary government for private members to assume the responsibility of proposing such questions to Parliament. It is an important financial principle, that 'the House should not be called upon to condemn taxes which they are not prepared on the instant to repeal,'[i] as by so doing they unsettle the minds of commercial men in their business transactions, and occasion embarrassment to the government in their plans for the regulation of the public finances. Abstract resolutions advocating changes in the scheme or distri-

Inexpedient for private members to introduce such questions.

Abstract resolutions on particular taxes.

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[c] Hans. D. v. 205, p. 2024.
[d] *Ib.* v. 208, p. 1660.
[e] *Ib.* v. 206, p. 242.
[f] *Ib.* p. 964.
[g] Hearn, Govt. of Eng. p. 351. May, Parl. Prac. ed. 1883, p. 684. Hans. D. v. 211, p. 1903.
[h] By Mr. Disraeli, Hans. D. v. 125, p. 1174. By Mr. Gladstone, *Ib.* v. 161, p. 1667.
[i] Mr. Gladstone, *Ib.* v. 125, p. 1149; v. 173, p. 1462.

bution of taxation, or the imposition of new duties;[j] or the reduction of particular branches of taxation, have been not infrequently submitted to the House of Commons by private members, but they have been generally resisted by the government as being inexpedient and impolitic.

Precedents

The following precedents of motions for the reduction or repeal of particular taxes may be cited, as illustrating the practice of Parliament, and, moreover, as showing that, sooner or later, ministers always defer to the recorded judgment of the House of Commons upon matters of taxation.

Income tax.

First, in regard to the question of the income tax. The attention of the House has been frequently invited to the consideration of this question, by private members, who from time to time have propounded various schemes to relieve certain classes of the community from the unequal operation of this impost. On May 2, 1851, Mr. Hume induced the House to agree to an amendment to a government Bill for continuing the property tax for three years, whereby its operation was limited to one year, with an express view to an enquiry into the mode of assessing and collecting the income tax. Such a committee was formally appointed on May 8, with authority to consider whether a more equitable mode of levying this tax could be devised. Both the premier (Lord John Russell) and Mr. Disraeli expressed their disapprobation of this committee as an unwise interference with the functions of government; but, nevertheless, consented to its appointment, in order to carry out the previous determination of the House.[k] The committee encountered great difficulties in the investigation of this question, and, after devoting two years to the subject, confined themselves to reporting the evidence they had taken to the House, without expressing any opinion thereupon.[l] On February 19, 1861, on the motion of Mr. Hubbard, a select committee was again appointed, to consider of some more equitable mode of levying the income and property taxes. The motion was opposed by the chancellor of the exchequer (Mr. Gladstone), and by Sir Stafford Northcote, an eminent leader of the Opposition, but was carried by a majority of four. After full enquiry, the committee reported to the effect, that the objections to

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[j] Com. Jour. v. 88, p. 336; v. 94, p. 510; v. 102, p. 580; v. 103, p. 886. Hans. D. v. 229, p. 778.

[k] Hans. D. v. 116, pp. 726-732.

[l] Com. Pap. 1851, v. 10, p. 339; 1852, v. 9, pp. 1, 463. See also Peto on Taxation, p. 90.

this tax were rather to its essence and nature than to its incidence; and that it would be unjust to reconstruct its mode of operation without at the same time revising other parts of our fiscal system.[m] Notwithstanding the adverse report of this committee, Mr. Hubbard, on May 13, 1862, submitted to the House a resolution in favour of a re-adjustment of the income tax, in respect to certain alleged abuses. The motion was opposed by the chancellor of the exchequer, and negatived by a large majority. Nothing daunted by this defeat, Mr. Hubbard renewed his attack in the following session, by moving, on March 24, 1863, a similar resolution for the re-adjustment of this impost. The motion was again opposed by the chancellor of the exchequer, who characterised Mr. Hubbard's scheme as being visionary and impracticable, and as affording no adequate remedy for the admitted irregularities of the income tax. Without any further debate, the motion was then put and negatived.[n] On April 23 following, Mr. Roebuck moved to resolve that on a renewal of this tax, a lower charge should be imposed on precarious incomes than on permanent incomes. The motion was opposed by the chancellor of the exchequer, and, after a short debate, was withdrawn.[o] On July 3, 1874, Mr. C. E. Lewis moved the adoption of a resolution, in favour of the further reduction of the income tax (then only twopence in the pound) and its ultimate repeal, at the earliest possible moment. After a long debate, the motion was negatived, by a large majority. On March 11, 1875, Mr. Sandford moved, to resolve that incomes not exceeding 300*l.* per annum should be exempt from this tax, but it was negatived.

Precedents.

In 1850, and again in 1851 and in 1853, Lord R. Grosvenor brought in a Bill to abolish the annual duty payable on attorneys', &c. certificates. The principle of this Bill was affirmed by the House, on division; but the government succeeded in delaying its passage. On May 19, 1865, on motion of Mr. Denman, an abstract resolution in favour of the abolition of this duty was agreed to by the House, notwithstanding the 'stout resistance of the government,' both on the ground of principle and expediency.[p] In 1867, a Bill to reduce this duty was brought in by Mr. Denman, and read a second time, notwithstanding the opposition of ministers, but the third reading was put off for three months.[q]

Duty on certificates.

On April 14, 1853, Mr. Milner Gibson moved the House of Commons to declare that the advertisement duty ought to be re-

Advertisement duty.

[m] Com. Pap. 1861, v. 7, p. 4.

[n] Hans. D. v. 169, p. 1848. On June 14, 1864, Mr. Hubbard again moved a resolution, condemnatory of the inequalities and injustice attending the operation of the existing property and income tax; but it was negatived on division. See Mr. Hubbard's observations on this tax. *Ib.* v. 178, p. 1501.

[o] Hans. D. v. 170, pp. 614-625.

[p] *Ib.* v. 179, pp. 564-577.

[q] *Ib.* v. 185, p. 1064; v. 188, p. 922.

Precedents.

pealed. The government opposed the motion, but it was agreed to on division.[r] Nevertheless, the chancellor of the exchequer refused to give way. Some days afterwards the House went into committee of ways and means, when the chancellor of the exchequer proposed to fix the rate of this duty at sixpence. The opponents of the duty again succeeded: the proposed rate was struck out, and no other amount inserted in the resolution.[s] After this, the government acquiesced in the abolition of the duty.[t]

Paper duty.

On the same occasion (April 14, 1853), and as a part of his scheme for the abolition of taxes on knowledge, Mr. Milner Gibson moved a resolution condemning the continuance of the paper duty as a permanent source of revenue, as being impolitic and inconsistent with the efforts of Parliament for the encouragement of education. The previous question was proposed on this resolution, and negatived. On June 21, 1858, Mr. Gibson again brought forward the question, upon a motion 'That this House is of opinion that the maintenance of the excise on paper, as a permanent source of revenue, would be impolitic; and that such financial arrangements ought to be made as will enable Parliament to dispense with that tax.' The chancellor of the exchequer (Mr. Disraeli) stated his readiness to agree to the repeal of this tax when a favourable opportunity should arise, but he strongly objected to the latter part of the motion, as being a 'highly impolitic and inexpedient' endeavour to hamper the government by an abstract resolution concerning a tax, at a time when it would be impossible to act upon it. He suggested the withdrawal of the latter part of the motion, from the word 'impolitic,' which was also advised by Lord John Russell and other leading members, on the same ground. This being consented to by Mr. Gibson, the former part of the motion, condemning the permanent continuance of the paper duties, was agreed to without a division.[u] In 1860, Mr. Gladstone (the then chancellor of the exchequer) included the abolition of the paper duty in his financial measures for the year, and a Bill for that purpose passed the House of Commons, but was rejected by the Lords.[v] Next session a similar proposition was inserted in a Bill respecting customs and inland revenue, which passed both Houses, and became law.

Hop duty.

On March 5, 1861, Mr. Dodson moved to resolve 'that the maintenance of any duties upon hops is impolitic; and that in any remission of taxation or adjustment of financial burdens, provision should be made for the removal of such duties.' The chancellor of

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[r] Hans. D. v. 125, p. 1187.
[s] *Ib.* v. 128, p. 1128.
[t] *Ib.* v. 161, p. 1668.
[u] *Ib.* v. 151, pp. 110–135.
[v] Lords' Debates, May 21, 1860. A narrative of this celebrated case will be given in vol. ii.

the exchequer (Mr. Gladstone) asked no one to give an opinion on the merits of this duty, but objected to the motion on the ground that it was an abstract resolution relating to the matter of finance. Without denying the right of the House, under any circumstances, to pass such a resolution, he characterised the same as being a rash innovation on the practice of the House in former times. He held up the paper duty resolution as an example which ought to be a warning to the House not to commit itself to a similar proceeding, but to await the proper time when the financial condition of the country could be considered as a whole in connection with the fiscal propositions to be submitted to it by the government. Acquiescing in these views, the House negatived the motion by a large majority.[w] The budget laid before the House by the chancellor of the exchequer in the following session contained a proposal for the repeal of the hop duties, so that the sentiments entertained by the House on this question ultimately prevailed. Precedents.

On May 4, 1860, and again on March 8, 1861, Mr. H. B. Sheridan moved for leave to bring in a Bill to reduce the duty on fire insurance. On both occasions the motion was opposed by the ministry, and negatived by the House. In 1860, the motion was made after the budget had been opened by the chancellor of the exchequer, and he objected to it because it was ill-timed, as it would effect a considerable loss of revenue that could not be spared, and because, even if its operation should be postponed, no tax ought to be condemned until the House is prepared to reduce or abolish it.[x] In 1861, the chancellor of the exchequer objected to the motion on the ground that no proposal should be made to reduce a tax until after the budget had been brought forward, when, if it should appear that there was a surplus revenue sufficient to justify an abatement of taxation, the proposed claim for relief could be put into competition with similar demands, and be fairly considered by the House.[y] On April 1, 1862, Mr. Sheridan again proposed his Bill. This time, as on the previous occasion, the budget had not been submitted to the House. The chancellor of the exchequer, in opposing the motion, said that it was 'the duty of every government—a duty always acted upon—to object to any individual and isolated proposals for the repeal of taxes before the House had within its view the general state of the revenue and charges of the country.' 'The popular principle of government, and the control of it by the House of Commons, depend on nothing so much as this,—that it should narrow into a single measure the financial operations of the year.' If brought forward after the introduction of the budget, the same objections to this motion would not apply. On this point it was Fire insurance duty.

[w] Hans. D. v. 161, pp. 1448-1457.
[x] *Ib.* v. 158, p. 728.
[y] *Ib.* v. 161, p. 1667; and see v. 172, p. 813.

Precedents.

also contended by the premier (Lord Palmerston) that it was a principle of our constitutional system, that the discretion of proposing to Parliament the necessary financial arrangements for the year should be left to the chancellor of the exchequer, as the organ of the administration, and that any objections to be offered, or alterations to be proposed, should be reserved until after the opening of the budget. Nevertheless the motion for leave to bring in the Bill was carried against the government.[z] Subsequently, on introducing the budget, the chancellor of the exchequer briefly explained the impossibility of carrying out the reduction of this tax, stating that there was no surplus revenue available for the purpose. He added that he was sorry to reflect that the only security for a chancellor of the exchequer lay in his utter destitution. 'If he does not possess a surplus you cannot take it from him; or, according to an old proverb current in the northern portion of this kingdom, which I will translate for fear of offending Scottish ears by a defective accent, "It is difficult to deprive a Highlander of a particular garment which he does not wear."'[a] Accordingly the Bill, though formally presented on April 10, was not proceeded with, because the mover 'took the vote of the House to imply rather a recognition of the principle of reduction than the empowering a private member to interfere with the financial arrangements of the government.'[b] On July 14, 1863, the subject was again submitted to the House of Commons by Mr. Sheridan, in the shape of an abstract resolution, recording the opinion of the House that the duty upon fire insurances is 'excessive in amount, that it prevents insurance, and should be reduced at the earliest opportunity.' The motion was opposed by Mr. Gladstone on the general grounds of constitutional practice previously urged by him, but was nevertheless carried against the government by a majority of thirty-six. On March 15, 1864, Mr. Sheridan declared his intention of again taking the sense of the House in regard to this tax, but would defer so doing until after the budget had been opened. On April 7, in his budget speech, the chancellor of the exchequer stated that, 'in deference to the convictions entertained by the House, the government had determined to recommend that the duty on fire insurances should be reduced one-half.'[c] Dissatisfied with this concession, Mr. Sheridan moved to resolve, upon going into committee of ways and means, that a further reduction would be more in accordance with the wishes of the House in agreeing to the foregoing resolution. He was opposed by the chancellor of the exchequer; and, upon division, the motion was negatived.[d] On

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[z] Hans. D. v. 166. pp. 385-399.
[a] *Ib.* p. 464.
[b] *Ib.* v. 172, p. 790.
[c] *Ib.* v. 174, p 590.
[d] *Ib* p. 1431-1450.

March 21, 1865, Mr. Sheridan again submitted to the House a motion to declare the expediency of reducing this duty to a uniform standard of one shilling and sixpence on all descriptions of insurable property. It was strenuously opposed by the chancellor of the exchequer, who moved the previous question; but on division the previous question was carried, and the main question agreed to. On proposing the budget on April 27 following, the chancellor of the exchequer announced that, in deference to the unmistakable expression of opinion by the House on this subject, the government had decided to recommend a reduction of this duty to a uniform rate of one shilling and sixpence, from June 25.[e] This concession, however, failed to satisfy Mr. Sheridan and his friends. Accordingly, in the session of 1866, both Mr. Sheridan and Mr. Hubbard gave notice of separate motions regarding this tax. Mr. Hubbard's motion, which was first proposed as an amendment to the motion for the second reading of the Customs and Inland Revenue Bill, was to declare the inexpediency of retaining, as part of the Inland Revenue for the service of the year, the present duties on fire and marine insurances, for certain reasons alleged. After a short debate the amendment was negatived without a division.[f] Precedents.

On March 7, 1876, Mr. Spinks moved to resolve, that the railway passenger duty ought to be reduced at an early date, with a view to its ultimate repeal. In amendment, Mr. Rodwell moved, that a select committee be appointed to enquire into the operation of this duty, and especially as to its effect upon the working of cheap trains. The government accepted this amendment, and it was agreed to accordingly. The committee reported, on June 23, that it was undesirable to maintain this tax any longer than is necessary for fiscal purposes. On April 17, 1877, Mr. Knatchbull-Hugessen, who was a member of this committee, moved, seconded by Mr. Spinks, that, pending the question of the abolition of this duty, the other recommendations of the committee should receive the early attention of government. To this an amendment was moved, to deprecate the abolition of the tax. After a long debate the chancellor of the exchequer stated that he objected to both motions, and to the House agreeing to a resolution, which points to the abolition of a tax, where there are avowedly not the means for giving effect to that resolution at once. Finally the motion and amendment were both withdrawn. Railway passenger duty.

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[e] Hans. D. v. 178 pp. 1120 1124.

[f] *Ib.* v. 183, pp. 1199-1202, 1407. And see *Ib.* March 19 and May 16, 1867, when the other unsuccessful attempts were made to obtain a further reduction of this duty. On April 6, 1869, Mr. Sheridan again proposed a resolution in favour of a reduction of the duty on fire insurances to sixpence per cent. But as the budget was to be presented within forty-eight hours, Mr. Gladstone (prime minister) moved that the debate thereon be adjourned for a week,

Precedents.

Malt Tax.

On June 24, 1864, Mr. Morritt moved, as an amendment upon going into supply, to resolve that in case of any modification of the indirect taxation of this country, the excise on malt requires consideration. The motion was opposed by the chancellor of the exchequer upon similar grounds of objection to those made use of in regard to former motions of this description, and was negatived on division. On March 7, 1865, a similar resolution was proposed by Sir Fitzroy Kelly. After an amendment had been proposed thereto and withdrawn, the previous question was put and negatived. But on proposing his budget on April 27 following, the chancellor of the exchequer intimated that he was prepared to offer a partial relief to the opponents of this duty by giving the maltster the option of having the duty charged by weight instead of by measure.[g] This trifling concession was of no avail to satisfy the opponents of the malt tax. Accordingly on April 17, 1866, Sir F. Kelly again submitted a resolution in favour of the speedy reduction and ultimate repeal of this duty. After a long debate, the motion was negatived on division.

On May 14, 1867, with the consent of the government, the House of Commons appointed a select committee 'to enquire into the operation of the malt tax.' Being unable to complete their enquiry, the committee, on July 25, reported the evidence already taken, and recommended that they should be re-appointed in the next session. This was done, and on July 13, 1868, the committee reported in favour of a repeal of the malt tax, provided the loss to the revenue could be made up in some other way.[h] Whereupon, on March 1870, a proposition for the substitution of a tax on beer in lieu of the malt tax was submitted to the House. After debate, the chancellor of the exchequer promised it should have his careful consideration and the motion was withdrawn.

Carriers' duty.

On March 14, 1868, Mr. Lawrence moved, that the House should go into committee to consider of the Acts relating to post horse and carriage licences, &c. duties, with a view to revise, reduce, and equalise the taxes on locomotion. After a short debate, the motion was withdrawn, at the request of the chancellor of the exchequer.[i] The motion was again made, on March 16, 1869, with a similar result. But in the budget of the same session provision was made for reducing and equalising all taxes on locomotion.[k]

Male servants' duty.

On July 15, 1870, a private member called the attention of the House to a rigid construction placed by the excise office on an Act

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which was carried. But two days after, the chancellor of the exchequer, in making his financial statement, announced the intention of ministers to abolish the tax altogether. Hans. D. v. 195, pp. 305, 391.

[g] Hans. D. v. 178, p. 1120; Act 28 & 29 Vict. c. 66.

[h] Com. Pap. 1867-68. v. 9, p. 235.

[i] Hans. D. v. 191, pp. 187-196.

[j] *Ib.* v. 194, p. 1523.

[k] *Ib.* v. 195, p. 393.

passed in the previous session of Parliament imposing an assessed duty on male servants.[1] Failing to obtain a remedy for his grievance, next session he brought in a Bill to amend the Customs and Inland Revenue Act of 1869, in this particular. This Bill was opposed by ministers, on the ground that it would set a most inconvenient precedent, inasmuch as all enactments of this kind should be embodied in the same measure. Upon the introduction of the annual Bill to amend the customs and inland revenue law, a clause to the effect of this Bill might be moved in committee. Whereupon the second reading of the Bill was deferred.[m]

On April 23, 1874, in committee of ways and means, on a formal motion, 'that it is expedient to amend the laws relating to the inland revenue,' a private member moved, that it is expedient to repeal the Gun Licence Act, 1870, which was negatived on division.

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[1] Hans. D. v. 203, p. 349.

[m] *Ib.* v. 205, pp. 403, 1689.

CHAPTER XVII.

THE RIGHTS AND PRIVILEGES OF PARLIAMENT, AND ESPECIALLY OF THE HOUSE OF COMMONS, IN THE GRANT OF MONEY FOR THE PUBLIC SERVICE.

Grant of supplies by Parliament.

FROM a very early period in the history of England the principle has been established, that the right of taxation, and the granting supplies for the public service, belong exclusively to Parliament.

The old prerogative claim of the sovereign to levy taxes on the subject at his own will and pleasure, was first expressly restrained by the declaration, in Magna Charta, that 'no scutage or aid shall be imposed in our kingdom unless by the general council of our kingdom;' with certain exceptions peculiar to the person and family of the king himself.

This concession lies at the foundation of our parliamentary institutions, and especially of the House of Commons as a distinct branch of the legislature. The growth of the Commons in power and influence was strikingly exemplified by the statute *De tallagio non concedendo*, in the 25th Edward I., by which it was declared, 'That no tallage or aid shall be taken or levied without the good will and assent of the archbishops, bishops, earls, barons, knights, burgesses, and other freemen of the land.'[a]

Concurrently, however, with parliamentary taxation, other imposts used to be levied by royal prerogative,[b]

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[a] Stubbs, Const. Hist. v. 2, pp. 142, 564.

[b] See *ante*, p. 457; Cox, Inst. pp. 600-603.

independently of the action of Parliament; but none of these survived the Revolution of 1688. It was guaranteed by the Bill of Rights that henceforth 'no man be compelled to make any gift, loan, or benevolence, or tax, without common consent by Act of Parliament.' And it was finally established by the Act of Settlement, 'That levying money for or to the use of the crown by pretence and prerogative, without grant of Parliament, for longer time or in other manner than the same is or shall be granted, is illegal.'

No supplies to be used, unless granted by Parliament.

Since that memorable period the crown has been entirely dependent upon Parliament for its revenues, which are derived either from annual grants for specific public services, or from payments already secured and appropriated by Acts of Parliament, and which are commonly known as charges upon the Consolidated Fund.[c]

Prize money.

On this principle—while prize-money, obtained through the valour of the army and navy, is distributed by the crown itself, by virtue of its prerogative[d] to the captors; any surplus remaining over after such distribution should be paid over to the Consolidated Fund, and could not be appropriated to public uses, without the authority of Parliament.[e]

Any question as to the right of persons to participate in prize money should be determined by the lords of the Treasury under the guidance of the law officers of the crown. But in 1863, in the case of the Banda and Kirwee prize-money, the government undertook to make no final arrangement in regard thereto until papers on the subject had been communicated to the House of Commons, 'so as to give that House the opportunity of intercepting the proposed distribution, if it thought proper to do so.'[f] This case having excited much controversy, a royal commission enquiry into the whole subject of Army Prize was appointed in 1864, upon whose recommendation a royal warrant was afterwards issued, under which

[c] Broom, Const. Law, pp. 398–402.

[d] Clode, Mil. Forces, v. 2, p. 292; Hans. D. v. 71, p. 352; v. 82, p. 682.

[e] *Ib.* v. 61, p. 484; Com. Pap. 1842, v. 26, pp. 369–371.

[f] Hans. D. v. 172, pp. 250, 817, 1475.

the Court of Admiralty took cognisance of the case, judgment was rendered in 1866,[g] awarding to the proper claimants their rightful share of this vast booty.[h]

Consent of Parliament necessary to receive gifts or loans.

And while the crown is not at liberty to invite or receive gifts or loans of money for any public service without the consent of Parliament, neither may any person voluntarily lend money to the crown, or to any department of state, for public purposes, without the sanction of Parliament, under penalty of a misdemeanour.[i] The charter of the Bank of England contains a clause forbidding money transactions between the Bank and the Treasury, that have not received express parliamentary authority.[j]

Military reserve funds.

A discussion arose in the House of Commons on April 28, 1862, in reference to the Military Reserve Fund, a fund which since 1851 had accumulated from the proceeds of the sale of army commissions, and amounted to a very considerable sum.[k] This fund had been appropriated, under the authority of the secretary of state for war, to 'facilitate and remove the friction from the working of the system of purchase,' and it was admitted that no fault could be found with the practice. Nevertheless, grave constitutional objections were urged against the existence of a fund not voted by Parliament, or subject to its control, but which was expended at the discretion of government. The secretary for war acknowledged that these objections were well founded, and promised that the attention of government should be directed to the question, with a view to this fund being brought under parliamentary examination and audit.[l] Since 1860, accounts of the application of this fund

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[g] 12 Jurist N.S. p. 819.

[h] Law. Mag. v. 23, p. 66; Hans. D. v. 188, p. 983; v. 194, p. 1462; Com. Pap. 1868-69, v. 46. *Ib.* 1871, v. 50. *Ib.* 1875, v. 156. Hans. D. v. 231, p. 821; v. 201, pp. 1524-51; v. 212, p. 1404.

[i] See debates in the Commons on Mr. Sheridan's motion respecting voluntary aids for public purposes without the consent of Parliament, Parl. Hist. v. 31, pp. 83, 97; and in the Lords, *Ib.* p. 122. See Lord Brougham's comments on this case, Hans. D. v. 83, p. 37; Mr. Massey's observations in his George III. v. 4, p. 77; Clode, Mil. Forces, v. 1, p. 101; Com. Pap. 1868-9, v. 35, p. 963.

[j] Hans D. v. 162, p. 887; and see Report of the Comptroller of the Exchequer, in Rep. Com[e]. on Public Moneys, Com. Pap. 1857, Sess. 2, v. 9.

[k] The Commons Com[e]. on military organisation, of 1860, first directed the attention of the House to the existence of this anomalous fund. (Report, pp. xi. xii.; Evid. pp. 471-473.) And see Smith's Parl. Rememb. 1862, p. 79.

[l] Hans. D. v. 166, p. 985; and see v. 168, p. 736.

have been periodically submitted to Parliament; and to this extent brought under the control of Parliament. A fund arising from fines imposed on soldiers for drunkenness is distributed in conformity with the recommendations of a select committee of the House of Commons in 1870.[m] On May 14, 1867, a select committee was appointed by the House to enquire into the origin of Military Reserve Funds, the sources from which they are derived, and the objects to which they are applied. On July 22, this committee reported the evidence already taken, with a recommendation that they might be reappointed next session, to complete the enquiry.[n] It was accordingly reappointed in 1868, and on May 22 reported an opinion, that on constitutional grounds the Military Reserve Fund should be wound up.[o] The government promised to consider the matter.

Loans.

Debts due to the crown.

Government sales.

The constitutional principle of parliamentary control is also applicable to advances or loans of public money, to foreign powers, corporations, or private persons; to the remission of debts due to the crown by any such persons or powers; and even to the sale of property by one department of the state, and its purchase by another department for public uses.[p] It equally applies to the gift of public money, or public stores, in the name or on behalf of the crown.[q] Public departments are not now at liberty to give away stores without the direct sanction of Parliament. The rule, that no public property should be disposed of in kind, has been 'one of the most difficult achievements of financial reform during the last half century.' Before the establishment of this rule the public never knew when anything was given away, or what was the value of the gift.[r] But by a Treasury minute, issued on May 13, 1871, pursuant to the First Report of the Committee of Public Accounts in that year, every public department is now

[m] Hans. D. v. 214, p. 1303.

[n] Com. Pap. 1867, v. 7, p. 713; Hans. D. v. 189, p. 334.

[o] Com. Pap. 1867 8, v. 6.

[p] The question of sales of public property between different public departments will be considered in *post*, vol. ii., when treating of unauthorised expenditure.

[q] Hans. D. v. 193, p. 1279. Clode, Mil. Forces, v. 2, p. 445.

[r] Mr. Gladstone, on an address for the grant of gun-metal to erect a statue to Visct. Gough, Hans. D. v. 203, p. 779.

required to notify the Treasury whenever it is proposed to relinquish a claim due to the public, whether of cash or stores.

Advances of public money.

Advances out of the public funds, for whatsoever purpose, should ordinarily be made only by express authority of Parliament.[s]

Precedents.

In 1868 the select committee on the Lee River Conservancy Bill recommended the Treasury to consider the expediency of authorising the Public Works Loan Commissioners to advance to the said conservancy board funds to pay off certain debts.[t]

Public Works Loan Commissioners

In April 1876, regulations approved by the Treasury were issued for carrying into effect the Public Works Loan Act, 1875. They empowered the commissioners to elect a chairman and deputy-chairman, prescribed the method of conducting business, and fixed the quorum of the board at three. They also defined the powers of the board and its relation to the Local Government Board.[u]

In May 1876, the Public Works Loan Board presented their first annual report, under the Act of 1875. It was prefaced by an account of the origin of this department of the public service. It originated in 1817, a time at which, after the close of the European war, there was considerable difficulty in obtaining loans of capital for the execution of many works of public utility and advantage, and great numbers of the labouring classes were in want of employment. The proceedings of the department have been regulated by various Acts of Parliament, the first of which (57 Geo. III. c. 34) recites the benefits anticipated to result from the loans of public money, not to exceed in all 1,750,000*l.* authorised by the same. This Act provided for the appointment of twenty-one commissioners for the purposes of the Act in Great Britain, and fifteen commissioners for its execution in Ireland. By subsequent statutes, further sums were placed at the disposal of the commissioners for loans, and their powers were extended and enlarged. These Acts are all recited in this report, which gives full particulars of the operations of the board from its first establishment.[v]

By the Act 39 & 40 Vict. c. 31, the sum of four million pounds

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[s] See Act 57 Geo III c. 34, appointing Public Works Loan Commissioners, and several Acts since passed extending powers of that board Also Acts 29 & 30 Vict. c. 72; 30 Vict. c. 32.

[t] Com Pap. 1867–8, v. 40, concerning the remission of bad debts owing to the Loan Fund, see Rep. Com[s]. Pub. Accts. Com. Pap 1874, v. 6, pp. 20, 143. Rep. Com[s]. Pub. Works Loan Bill. Com. Pap. 1875, v. 14, pp. 33, 69. For particulars concerning the origin and operations of this fund, see Hans. D. v. 222, p. 222.

[u] Com Pap. 1876, v. 42, p. 483.

[v] *Ib.* v. 21, p. 125.

was granted, for the purpose of loans by the Public Works Loan Commissioners for the current year, and certain amendments were made to the Loan Act of 1875. A like amount was granted in 1877, by the Act 40 & 41 Vict. c. 19, which also authorised the Public Works Loan Commissioners to compound a certain debt in respect to a loan granted by them in 1867. By the Public Works Loans Act, 1882, upwards of four millions were granted for loans in the United Kingdom, and they were empowered to postpone a debt due by a Scotch harbour. And by the Act 40 Vict. c. 2 (for the preparation, issue, and payment of Treasury bills), a new form of raising money is provided, which is specially adapted to facilitate and economise loans for public works from the loan commissioners.[w] reco-dents.

The Act of 57 Geo. III. c. 34, by which the commission was first appointed, named the commissioners, twenty-one in number, and empowered them to fill up vacancies in their number, which they usually did after communication with the chancellor of the exchequer. In the next Act of Parliament relating to the commissioners which happened to be passed, it was customary to insert the new names, in order that they might be confirmed by Parliament, but meanwhile the new commissioners were fully competent to act, and their appointments were considered as permanent. All the vacancies, however, have not been filled up. In 1875, there were only fifteen commissioners, and of these not more than eight or nine were active members of the board. In the consolidating and amending Act, passed in 1875, 38 & 39 Vict. c. 89, the names of the commissioners, sixteen in number, were all included, but the commissioners were still empowered to fill up vacancies themselves for unexpired terms of office.[x] But provision was made that the commissioners should not hold office for a longer period than five years unless otherwise directed by any Act of Parliament appointing a commissioner. The commissioners are unpaid, and have no patronage.[y] The idea has been 'That the loans granted by the state should be regulated by a body independent of political influence.'[z] This view has been endorsed and strengthened by the amending Act of 1875.

At first the Public Works Loan Commissioners had a yearly sum of 300,000*l.* appropriated to their requirements, in the grant of loans to local works upon their own discretion. But about 1861 a change was made in the policy of Parliament, and from that time various Acts have been passed, each of which opened a special credit on behalf of particular undertakings upon which the Public Works

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[w] Hans. D. v. 232, p. 1583. See also Public Works Loan (Ireland) Act, 1877, and article on Local Debts and Government Loans in Ed. Rev. v. 153, p. 548.

[x] Rep Com^e. Public Works Loans Bill, Com. Pap. 1875, v. 14, pp. 3, 7, 27, 38.

[y] *Vide* Report, p. 30.

[z] *Ib.* p. 66.

Precedents of money advances.

Loan Commissioners were at liberty to draw, without any *annual* limit to such expenditure, *e.g.*, the Harbour and Passing Tolls Act; Acts for Relief of Manufacturing Distress; Loans on account of the Cattle Disease; of the Public Education Acts; and of the Public Health Acts.

The amounts which the commissioners can draw under these Acts are very large, and have hitherto been indefinite. But it has become necessary that the chancellor of the exchequer should know beforehand the probable extent of such demands upon him for pecuniary advances within the year. And he accordingly announced his intention of adding to his ordinary yearly budget an annual statement, or 'local budget,' for the purpose of enabling Parliament to be informed each year of the progress of loan transactions, and of determining what amount of money should be voted to supply loans to be effected through the commission, and of providing for the same by a separate Bill.[a] Old running loans which have hitherto escaped the attention of Parliament are now to be abolished; and no loan is to be remitted or compounded without the authority of Parliament.[b] The evidence appended to the afore-mentioned report embodies much information upon the operations of the Public Works Loan Commissioners.[c]

By the Act 38 & 39 Vict. c. 58, the Treasury is empowered to issue to the Public Works Loan Commissioners, out of the Consolidated Fund, sums of money not exceeding in the whole three million pounds sterling, for the purpose of any loans by the commissioners which cannot be issued under Acts in force at the passing of this Act.[d]

Previous to the Act of 1875, the Treasury had power by warrant to reduce the terms on which loans might be made by the commissioners. But by that Act Parliament divested the Treasury of this power, so that full responsibility might rest on the commissioners, subject only to the control and revision of Parliament.[e]

On July 4, 1876, on going into committee upon a Bill to place four million pounds at the disposal of the commissioners for loans to be granted by them to local authorities during the current financial year, the president of the Local Government Board made the

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[a] *Vide* Report, Com. Pap. 1875, v. 14, pp. 38, 60, 62, 66; Hans. D. v. 233, p. 1687.

[b] Ch. of Exch. in Budget Speech, 1876, on loan transactions for Pub. Works. Hans. D. v. 228, p. 1111. A detailed statement, or 'Local Budget,' promised on bringing in a Public Works Loan Bill, *Ib.* v. 229, p. 669.

[c] Com. Pap. 1875, v. 14, p. 9, &c.; Ed. Rev. v. 153, p. 548, &c.

[d] 38 & 39 Vict. cc. 83 & 95.

[e] Hans. D. v. 230, pp. 872, 975, 981; v. 234, pp. 1169, 1291.

promised financial statement, showing the indebtedness of the local authorities and their current expenditure. The total indebtedness of local authorities in England and Wales was placed at 92,000,000*l.*, the great bulk of which was borrowed, not from the Public Works Loan Commissioners, but from private bankers and capitalists [f] On April 23, 1877, the 'Local Budget' was again presented by the same officer, asking the same grant of four millions. Money advances.

The Local Government Board [g] are required (by § 36 of the Public Works Loans Act of 1875) to satisfy themselves that every loan advanced by the Public Works Loan Commissioners on the security of any rate has been duly applied for the purpose for which it was advanced. Other new duties are imposed on this board by the Local Loans Act of 1875,[h] which came into force on the 1st of January, 1876. This Act enables every local authority in England and Wales to issue debentures and annuity certificates, and in some cases debenture stock, for the purpose of raising any new loan, which they are otherwise authorised to borrow; or for the purpose of discharging any existing loan, lawfully contracted.

By the 161st section of the Public Health Act, 1875, the Local Government Board are empowered to issue provisional orders, in certain cases, authorising the establishment by urban authorities of undertakings under the Gas and Water Facilities Act, 1870. The advantages attending the Provisional Order System as compared with that of Local Acts, and the growing appreciation thereof by local authorities, are pointed out in the fifth annual report of the Local Government Board, 1875-6 (p. lviii.) On the other hand, the attention of the House of Lords was directed by Lord Redesdale on July 18 and 20, 1876, to the abuses to which this system, in general so useful and advantageous, was liable, and the need of great watchfulness by Parliament to obviate the same.[i]

Mr. Toulmin Smith comments on the unauthorised donation by the Commissioners of Woods and Forests, on April 26, 1865, of the sum of 15,000*l.* to 'the Bishop of London's Fund,' out of the land revenues of the crown, 'as a contribution in the name and on the part of her Majesty.' These revenues (under the Civil List Act) form part of the Consolidated Fund, and can only be appropriated by Parliament. The Queen had already made a liberal contribution to the bishop's fund from her privy purse; but this act of the Commissioners of Woods was illegal without the previous sanction of Parliament.[j] Also the case of the gun-metal presented by government towards

[f] Hans. D. v. 230, p. 951.

[g] See their Ann. Rep. for 1875–6. Com. Pap. 1876, v. 31, p. 51.

[h] 38 & 39 Vict. c. 83.

[i] Hans. D. v. 230, pp. 1519, 1618. For particulars concerning the official staff of the P. W. Loan Com. see Com. Pap. 1877, v. 57, p. 136.

[j] Smith's Parl. Rememb. 1865, p. 66.

the construction of the National Memorial to the Prince Consort. And the enquiry before the Committee of Public Accounts, in 1867, as to a present made by a secretary of state of 400*l.* worth of government stores to a colony without proper authority.[k]

In urgent cases, requiring immediate relief, or when, on grounds of public policy, secresy is advisable, the government can have recourse in the first instance to the 'Civil Contingencies,' or the 'Treasury Chest' funds, the nature of which will be hereafter explained. But they are strictly accountable to Parliament for all such transactions, and the advances so made out of these funds must be replaced out of moneys voted by Parliament for that service.[l]

Remission of loans or debts, &c., require the sanction of Parliament.

No remission by government of loans, or of the principal or interest of debts due to the crown, whether by foreign powers, corporations, local authorities, or individuals, is justifiable without the knowledge and consent of Parliament.[m]

By Act 11 & 12 Vict. c. 54, the Crinan Canal Company was assumed by government, because the company were unable to repay the sums advanced to them by the Treasury. See also the case of the Leith Docks, &c. By the Act 23 & 24 Vict. c. 48, the lords of the Treasury were authorised to accept the sum of 50,000*l.* in full satisfaction for a debt of 228,374*l.* 9*s.* 8*d.* incurred by the City of Edinburgh for advances made by the Treasury on behalf of the harbour and docks of Leith; this debt having been secured by bonds to the said amount, granted by the corporation of Edinburgh. The Bill was brought in by Mr. Laing, the secretary to the Treasury; it elicited no debate in the House of Commons, but was referred to a select committee, before whom Mr. Laing appeared, and showed that the proposed arrangement was the best bargain that could be

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[k] Com. Pap. 1867, v. 10, pp. 692, 695–699.

[l] See Mr. Pitt's advance to Messrs. Boyd, Benfield & Co. in 1796. Parl. D. v. 5, pp. 385–424; also Hans. D. v. 63, pp. 1139, 1314. Peel's Memoirs, v. 2, p. 174. Knight's Hist. of Eng. v. 8, p. 548. Rep. on Pub. Moneys, Com. Pap. 1857, Sess. 2, v. 9, p. 615.

[m] S. O. H. of C. March 25, 1715, and March 29, 1707. Compounding debts due to the crown. Com. Jour. v. 75, p. 167; v. 81, p. 66. Case of the Crinan Canal Co. *Ib.* v. 83, pp. 213, 219, 251.

made by the government.[n] Whereupon the Bill was reported and agreed to by both Houses. See also the Dominica Hurricane Loan Act, 23 & 24 Vict. c. 57.[o]

Upon this principle the surrender of the rights of the crown in cases of 'Treasure Trove,' by relinquishing the same to the finders, would be unjustifiable, had it not been authorised by the Civil List Act.[p]

Loans to foreign powers.

So far as loans to foreign powers are concerned, the practice of government has been heretofore somewhat irregular and objectionable, as the following cases will show.

Precedents.

In 1863, when the Ionian Islands were ceded by the British government to the kingdom of Greece, a portion of certain arrears, due by the said islands to the imperial Treasury, was remitted, without the previous authority of Parliament.[q] This proceeding gave rise to a motion of censure in the House of Commons on June 27, 1864. The chancellor of the exchequer defended the course taken by the government, by reference to former precedents, but at the same time he admitted that it was questionable whether it might not be possible to improve the established practice in such cases. In 1823, the government, by a convention with the Emperor of Austria, agreed to accept the sum of 2,500,000*l.* in lieu of a much larger amount due by Austria, under previous engagements with the British crown. This proceeding was not submitted to Parliament until the following year, when it was sanctioned by the Act 5 Geo. IV. c. 9. A debt due by Portugal was remitted, by treaty, in 1815, without any application to Parliament upon the subject. In brief, the constitutional practice in such cases was thus defined by the chancellor of the exchequer :—When a sum of money, to which the British crown was entitled, was surrendered, it was customary to surrender the same by treaty, which was not made contingent on the assent of Parliament. He admitted that, in a constitutional point of view, the assent of Parliament was neces-

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[n] Com. Pap. 1860, v. 15, p. 32.

[o] See Return of Cases wherein the Treasury have compounded a public debt, or reduced the interest thereon, since 1857. Com. Pap. 1867, v. 40, p. 317. And case of Cheshire debt due on account of Cattle Plague. Hans. D. v. 197, p. 1807. See also *Ib.* v. 207, p. 1224; v. 216, p. 1605; v. 219, p. 301. Rep. Com[s]. Pub. Accts. Com. Pap. 1874. v. 6, p. xx. p. 143. Act 39 & 40 Vict. c. 31, § 6, and Public Loans Remission Act, 1877.

[p] 1 & 2 Vict. c. 2, § 12. Hans. D. v. 180, p. 440. In regard to the prerogative of Treasure Trove, see Forsyth, Const. Law, p. 178.

[q] Hans. D. v. 173, p. 1083; v. 176, p. 568.

sary,[r] but it was not usual to make it a condition precedent in the treaty itself. But when the crown undertook to pay a sum of money, it was customary to make such payment conditional upon the assent of Parliament. After these explanations the motion of censure was withdrawn.[s]

In 1864, a Bill to carry out an 'unconditional agreement' made by treaty with Greece, to remit 4,000*l.* a year, as a personal dotation to George I., king of the Hellenes, out of a debt due by Greece to Great Britain, was introduced by government, and passed without amendment.[t]

Grant of supply.

Directly the House of Commons have agreed to the Address in answer to the speech from the throne, the Committee of Supply is at once appointed, for a future day, by virtue of a standing order of July 28, 1870. As it is the duty of this committee to consider the estimates for the current year, the House then orders the estimates for the Army and Navy to be laid before them, and address the crown to give directions accordingly.[u]

Public revenues.

We may now proceed to state the various sources from whence the public revenue is derived, and the extent to which the revenue is subjected to the periodical revision and control of the House of Commons.

The revenues of the crown in Great Britain were anciently derivable from the hereditary lands of the crown, and from the operation of various prerogative rights. But since the establishment of parliamentary government, these revenues have been mostly surrendered to the control of Parliament, in exchange for a permanent civil list.[v] The public revenues of the country are now chiefly obtained from taxes and other imposts, which are levied under the authority of Acts

[r] In fact he had distinctly admitted this necessity upon a former occasion. Hans. D. v. 172, p. 251.

[s] *Ib.* v. 176, pp. 361, 405. And see procedure proposed by chanc. of exch. in 1870, with a view to formal relinquishment of debts due to Gt. Britain by Spain and Portugal for expenses incurred in Peninsular War. Hans. D. v. 200, p. 1617.

[t] Act 27 & 28 Vict. c. 40.

[u] Com. Jour. Nov. 25, 1867.

[v] See *ante*, p. 655.

of Parliament.[w] The whole revenue, from whatever source derived, is now (with some trifling exception) paid into the Bank of England or Ireland to the account of her Majesty's Exchequer. The old system of retaining public money at the Exchequer itself has been entirely abolished, and this great department remodelled, by recent legislation, as will hereafter appear, when we consider the manner in which the control of Parliament is exercised over the issue of public money.

The revenues which are thus paid into the Bank of England, to the account of the Exchequer, comprise all the principal revenues of the kingdom, including the Customs and Inland Revenue, and the receipts from the Post Office.

Consolidated Fund.

Formerly, the proceeds of parliamentary taxes constituted separate and distinct funds, but by the Act 27 Geo. III. c. 13, § 47, it was directed that the various duties and taxes should be carried to and constitute a fund, to be called 'The Consolidated Fund.'[x]

When the annual revenue raised by taxes is found insufficient, as in the case of war, to meet the annual expenditure, Parliament grants authority to raise money by loan to cover the deficiency. All moneys so raised are dealt with like the ordinary revenue, and are paid to the account of the Exchequer for the credit of the Consolidated Fund.[y]

Until the year 1854, the charges of collection and management of the revenue of Customs, Inland Revenue,

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For an historical account of the several branches of the Public Revenue, see Public Income and Expenditure of Gt. Britain, 1801–1869. Com. Pap. 1868-9, v. 35, p. 889, *et seq.* presented to Parlt. in 1869. As to the distinction between direct and indirect taxation, and the proportions contributed by each to the public revenue, see Mr. Lowe's and Mr. Disraeli's observations, Hans. D. v. 206, pp. 625, 976, 983.

[x] Com. Pap. 1868-9, v. 35, pp. 811–931. The Consolidated Funds of England and Ireland were united by 56 Geo. III. c. 98; and by 1 Vict. c. 2, various hereditary revenues of the crown were carried to this fund.

[y] Second Rept. Com[s]. Pub. Accts. Com. Pap. 1873, v. 7, p. 207.

Gross receipts to be paid into the exchequer.

and the Post Office, were payable out of the gross receipts of these imposts, respectively, and only the net revenue, after these and other deductions, was paid into the Consolidated Fund. The constitutional objections to this practice were repeatedly pressed upon the attention of successive administrations without effect. At length, on April 29, 1847, Dr. Bowring submitted to the House of Commons a series of resolutions—based upon the report of the Commissioners of Public Accounts in 1831—recommending the adoption of an improved system for the security of the public revenue, and for ensuring greater accuracy, simplicity, and completeness, in the public accounts; and requiring that the gross revenue of the country, without any deduction whatever, should be paid into the public chest, and be subjected to the surveillance and control of Parliament. After some debate, the motion was withdrawn. But, on April 30, 1848, the discussion was again renewed, and Dr. Bowring succeeded in carrying his resolutions by a bare majority. When questioned upon the subject in the following session, the chancellor of the exchequer informed the House that steps had been taken by the government to carry out in part the reforms proposed by the resolutions.[z] But it was not until 1854 that the great object aimed at by Dr. Bowring was sought to be accomplished by the passing of a Bill, which was introduced into Parliament by Mr. Gladstone, 'to bring the gross income and expenditure of the United Kingdom, &c. under the more immediate view and control of Parliament.'[a] By this Act, it was intended that the whole of the gross revenues of the country, derived from the Customs, Excise (with the exception of certain drawbacks, discounts, and repayments), and other taxes (not including the land revenues of the crown, which are

[z] Hans. D. v. 102, p. 499. [a] Act 17 & 18 Vict. c. 94.

Gross revenues payable to exchequer.

otherwise provided for), should be paid into the Exchequer, and the cost of collection be defrayed out of votes in supply.[b] Besides the cost of collection, the revenue was formerly chargeable with certain judicial and other salaries, pensions, and other payments, under the authority of various Acts of Parliament. By Mr. Gladstone's Act, these charges were transferred either to the Consolidated Fund or to the annual supplies to be voted by Parliament.[c]

On July 9, 1877, a resolution was proposed in the House of Commons to condemn the action of government in refusing to place a vote in the estimates to defray the salary of an office which, until 1854, had been paid out of the Consolidated Fund Ministers justified their act on the ground that the office was a sinecure, and that it was only after it had become vacant that they decided to abolish it.[d]

Under the authority of this Act, moreover, a very large number of charges, previously paid out of the Consolidated Fund, were placed, thenceforth, in the annual estimates.[e] And, by the Act 19 & 20 Vict. c. 59, certain superannuations and other charges which still remained payable out of the gross revenues were directed to be removed from the same, and placed upon the Consolidated Fund, &c. The only payments remaining which could be legally charged upon the gross revenues were the charges on the land revenues of the crown—the net receipts only of which are payable to the Consolidated Fund, under the statute 10 Geo. IV. c. 50, § 113, and the Civil List Act of 1 & 2 Vict. —and the drawbacks, bounties, repayments, and discounts, aforesaid.

But notwithstanding the Acts of 1854 and 1856,

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[b] Mr. Gladstone's speech, in Hans. D. v. 130, p. 216; see also *Ib.* v. 135, p. 301.

[c] As to the results which have followed from this improved system, see Peto on Taxation, ch. ix. 'On the Collection of the Revenue;' and Northcote on Financial Policy, p. 238.

[d] Hans. D. v. 235, p. 1023.

[e] Mr. Gladstone, in Hans. D. v. 169, p. 1943.

Gross revenues payable to exchequer.

the intentions whereof were clearly to require the payment of the whole revenue, minus the drawbacks, &c. above mentioned, into the Exchequer, this result was not obtained, owing to an omission in the Acts of any provision to render such a course compulsory. Accordingly, the attention of the Committee on Public Moneys, in 1857, was directed to the matter, and they recommended the passing of a law to make it imperative on the government to pay the gross revenues to the Exchequer, without any other deductions than those above-mentioned, in order that all issues for the public service might receive the previous sanction of Parliament. They also suggested that, if possible, the charges on the land revenues should be brought under the same parliamentary control.[f] By Treasury minutes, dated February 15 and December 23, 1858, the government agreed to this recommendation, excepting so far as the land revenues were concerned, which, for reasons stated, could not be carried out until a new civil list should be under consideration.[g] But although the Treasury undertook to submit to Parliament a Bill to effect this desirable improvement, no such measure was brought forward, and this great reform remained partially uncompleted until the passing of the Exchequer and Audit Departments Act, in 1866, the tenth clause of which has made the practice obligatory. Before the passing of this Act, the cost of collection was still deducted in some cases from the gross revenue; in other instances part of the cost was paid out of the gross revenue, and another part voted by the House of Commons in the supplies of the year.[h]

Salaries in revenue departments.

For considerations of public convenience, it is customary, in the case of the revenue departments gene-

[f] Rep. Com^e. Pub. Moneys, p. 4. Com. Pap. 1857, 2nd Sess. v. 9.

[g] Com. Pap. 1857-8, v. 34, p. 380; and 1860, v. 39, pt. i. p. 174.

[h] Peto on Taxation, p 210. But see Earl Grey on Parl. Gov. (new ed. pp. 85-90) for remarks on evil effects attending this change.

rally, to pay the salaries of employés, in the first instance, out of revenue receipts, and afterwards to repay these advances to the Exchequer out of the parliamentary votes for the said departments. This practice has been tacitly approved by the Committee of Public Accounts, and is sanctioned by the tenth clause of the Exchequer Act.[i]

Consolidated fund.

With this exception, therefore, the whole public revenue of the country, together with moneys received from loans, is placed to the account of the Consolidated Fund, out of which all public payments are made. Such payments are twofold: 1. By authority of permanent grants, under Acts of Parliament. 2. Pursuant to annual votes in Committee of Supply, payable out of the Consolidated Fund by ways and means annually provided.

Permanent grants.

The services provided for by permanent grants are in the proportion of about thirty millions to seventy millions of revenue. They are as follows:—

1. The National Debt,[j] including the funded and unfunded debt; 2. The Civil List[k]; 3. Annuities to the royal family, and pensions; 4. Salaries and allowances of certain independent officers; 5. Courts of justice; 6. Certain miscellaneous services, comprising interest and sinking fund of the Russian, Dutch, and Greek loans, compensations, &c. These charges are made payable out of the Consolidated Fund, by

[i] Fifth Rep. Com^e. Pub. Accts. Com. Pap. 1871, v. 11, p. 435; 2nd Rep. Com. Pap. 1873, v. 7, p. 250; Treasury Minute, Com. Pap. 1867, v. 39, p. 337.

[j] Amos, Primer of Eng. Const. ed. 1875, p. 222. For origin of National Debt, see Macaulay, Hist. of Eng. v. 4, p. 319. For particulars regarding several sinking funds established since 1716, and progressed opinion in Parliament on question of sinking fund for reduction of National Debt, see Com. Pap. 1862-9, v. 35, pp. 1194-1214; 38 & 39 Vict. c. 45. Treasury Minute of 23 July, 1881, on Mr. Gladstone's scheme for further reducing the National Debt. Com. Pap. 1881, v. 17, p. 307. For precautions taken to secure punctual payment of interest to the national creditor, and also payment of other fixed charges by the Bank of England, on behalf of government, see Shilling Mag. v. 4, p. 44.

[k] Concerning which see *ante*, p. 655.

permanent statutes, from year to year, without any renewal of parliamentary authority.[1] The principle of not subjecting to the uncertainty of an annual vote the provision for the security of the public creditor, the dignity of the crown, annuities and pensions to royal and distinguished persons, the salaries of judges and other officers in whose official character independence is an essential element, compensations for rights surrendered, and like charges, is one the soundness of which is generally admitted, although it may have been in certain cases carried too far.[m]

Annual charges.

The annual charges for the payment of interest on the unfunded debt, for the maintenance of the naval and military forces, for the collection of the revenue, and for the various civil services, are prepared in the respective departments of state to which they severally belong, and are afterwards revised and approved by the Treasury, in the manner described in the chapter of this work which treats of the functions of that branch of the executive government.

Unfunded debt.

The 'unfunded debt' consists principally of exchequer bills, which are in the nature of temporary loans to the government. Every year, during the sitting of the Committee of Supply, grants are made from time to time of money on account, to be raised by exchequer bills or loans. This supply of credit is voted in Committee of Supply, after which a resolution is reported from the Committee of Ways and Means that a sum equal to that amount be raised by loans or exchequer bills, to be charged on the next aids to be granted by Parliament.[n]

They are then submitted to the House of Commons[o] by command of the crown in very detailed estimates.

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[1] For financial history of these great heads of expenditure, see Com. Pap. 1868–9, v. 35, pp. 906–1134.

[m] Rep. on Pub. Moneys, Com. Pap. 2nd Sess. 1857, v. 9, p. 520. As to expenditure for diplomatic service, see *post*, v. 2.

[n] Cox, Inst. p. 193. Hans. D. v. 161, p. 1309.

[o] It is not customary to send the estimates to the House of Lords. In 1786 they applied for a copy, and were refused by the Commons. In 1839 they succeeded in obtaining a copy, 'almost for the first time in their history.' Hans. D. v. 159, pp. 1140, 1503.

Until the year 1863, there was one exception to this rule, in respect to the Disembodied Militia estimates, which used to be formally prepared by a committee of the House of Commons. In former times, the privilege of the direct control of the House over the expenditure upon the militia was highly prized, as one of the safeguards of the liberties of the country, the militia being considered a constitutional force, as distinguished from the regular army. Of late years that feeling has been entirely changed, in consequence of the control acquired by the House over the regular army in Committee of Supply; the militia estimates had come to be, in fact, prepared in the War Office, and to be merely formally assented to by the committee charged to prepare them. It was accordingly agreed to abandon this ancient usage, and to permit these estimates to be henceforth prepared by the executive government, and to be presented to Parliament simultaneously with the ordinary army estimates, as in the case of the expenses of the embodied militia and the yeomanry and of the volunteers.[p]

Presentation of the estimates

In order that the House may be informed, as early as possible, of the expenditure for which they will have to provide, the following resolution was agreed to on February 19, 1821, and has ever since been complied with:—

'That this House considers it essentially useful to the exact performance of its duties, as guardians of the public purse, that, during the continuance of the peace, whenever Parliament shall be assembled before Christmas, the estimates for the navy, army, and ordnance departments should be presented before January 15 then next following, if Parliament be then sitting; and that such estimates should be presented within ten days after the opening of the Committee of Supply, when Parliament shall not be assembled till after Christmas.'

The necessity for giving due consideration to the opinions expressed by the Committee on Public Accounts on the appropriation accounts of the preceding financial year is a serious impediment in the way of laying the civil service estimates on the table at the commencement of the session.[q]

[p] Hans. D. v. 168, p. 662. Mir. Parl. 1828, p. 1221. Hans D. v. 169, p. 198. Clode, Mil. Forc. v. 1, p. 43.

[q] Mr. Gladstone, Hans. D. v. 208, p. 1653.

Estimates.

The estimates for civil services, commonly called the miscellaneous estimates, together with those for the revenue departments and packet service, were usually presented somewhat later in the session. Since 1857, the Committees on Public Moneys, on Miscellaneous Expenditure, and on Public Accounts, have all recommended that these estimates should be laid on the table every session, as soon as possible after the meeting of Parliament, but the government experienced great difficulty in expediting their delivery.[r] On March 21, 1862, the House of Commons was informed by the chancellor of the exchequer (Mr. Gladstone) that, while it was most desirable to carry out this recommendation as strictly as possible, these estimates could not be presented with the same regularity as those for military and naval services; inasmuch as their complete preparation depended not merely on other public departments, but upon members of commissions, governing bodies of institutions, and even on others who gave gratuitous services to the public; and that, if the House laid down any fixed rule on the subject it would be complied with, 'but the effect would be that the miscellaneous estimates would be imperfect, and the practice of presenting supplementary estimates—one of the greatest financial evils the House could endure—would of necessity prevail.'[s] Nevertheless, the civil service estimates for 1866–67 were laid upon the table, in an improved shape, on February 16, 1866, being within sixteen days of the meeting of Parliament; those for 1867–68, on February 13, being within eight days of the commencement of the Session; and those for 1868–69 with equal promptitude. But, owing to the change of ministry in December 1868, the civil service estimates for 1869–70 were not presented until April 12, 1869, a vote on account for two months having been previously

[r] Treasury Minute of Dec. 23, 1858, in Com. Pap. 1860, v. 39, pt. i. p. 176.

[s] Hans. D. v. 165, p. 1930.

taken in Committee of Supply.[t] But the estimates for 1870–71 and for 1871–72 were each presented before the end of March. Estimates.

The civil service estimates for 1872–73 were not in the hands of members until March 22, 1872. This delay arises because 'it is considered better to wait till as near as possible the close of the financial year' (*i.e.* March 31), in order to ensure greater accuracy.[u] The late period of the session to which the introduction of the estimates, prior to 1876, was animadverted upon in the House in 1877.[v] The estimates for 1877–78 were presented on February 9.

But under the new system of financial accountability —by which the estimates are voted as early as possible, and no balances are carried over from the preceding year,—supplementary estimates have become a regular and unavoidable part of the financial system. If not resorted to a chancellor of the exchequer must needs make use of the civil contingencies for every unexpected demand. But the preference, if possible, should be given to supplementary estimates, rather than to the civil contingencies, for the latter fund is not submitted to Parliament until after the money is spent.[w] It is sometimes necessary to present the supplementary estimates early in the following session, before the expiration of the financial year. When this is done it is customary to take a vote in supply to make good excesses in expenditure beyond the grants for the current year.[x] But the vote may be divided into two or more votes if required, or amendments proposed to omit or reduce particular items in accordance with the usual practice in Committee of Supply.[y] Supplementary estimates ought,

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[t] Hans. D. v. 195, pp. 524, 544.

[u] *Ib.* v. 210, p. 303.

[v] *Ib.* v. 233, p. 120.

[w] Mr. Lowe (Ch. of Exch.), *Ib.* v. 210, pp. 604-607. Sir S. Northcote (C. of F.), *Ib.* v. 228, p. 1105.

[x] Hans. D. v. 205, pp. 308–323; v. 209, p. 2003.

[y] *Ib.* v. 199, pp. 1570–1579; Com. Pap. 1870, v. 48, p. 559.

strictly, to be confined to charges rendered necessary, by the legislation of the session.[z]

Supplementary estimates.

The objection urged by Mr. Gladstone in the foregoing remarks against the practice of supplementary estimates is one that he has repeatedly pressed upon the attention of Parliament. In 1862 he stated that he regarded such estimates 'with great jealousy. Though very plausible in theory, he thought that in practice nothing tended so much to defeat the efficacy of parliamentary control as the easy resort to supplementary estimates. To render this control effectual, it was necessary that the House of Commons should have the money transactions of the year presented to it in one mass, and in one account. If it is to be a set of current transactions, with a balance varying from time to time, the House would never know where it was. If supplementary estimates were easily and frequently resorted to, the House would be obliged, in self-defence, to appoint a permanent finance committee.'[a]

In 1876 the supplementary estimates for civil services and revenue debts which were presented on March 10, in addition to the original estimates voted in the previous session for the service of the year ending March 31, amounted to 244,991*l.*, and the votes in supply to make good excesses actually incurred in the original votes for this year amounted to over 23,585*l.*, besides about 240,000*l.* of deficiency on the aggregate grants for naval services. The Committee of Public Accounts comment upon this unsatisfactory result of the year's finance in their First Report of March 24, 1876, and state that new regulations have been framed at the Admiralty, from which it is anticipated that no such excess of naval expenditure will hereafter occur.

The gradual augmentation of the general administrative business of the country, which has taken place

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[z] Hans. D. v. 198, p. 1003; v. 203, p. 1466.

[a] Com. on Pub. Accts. Com. Pap. 1862, v. 11, Evid. 1571. Also Hans. D. v. 169, p. 1860. And debate on suppl. estimates submitted by Mr. Disraeli, in 1866, *Ib.* v. 184, pp. 1202, 1673; v. 185, p. 499. But in regard to suppl. estimates submitted early in a session, to make good deficiencies in grants of a previous year—a practice now invariable—see Mr. Ayrton's observations, Hans. D. v. 194, p. 539.

since the peace of 1815, and which is a proof of growing national prosperity, is unavoidably accompanied by a proportionate increase in the demands of nearly every department of the civil government—an increase moderate in each instance, but amounting to a considerable sum in the aggregate.[b]

The increase to the civil service estimates is also attributable to additional duties imposed upon government by recent legislation in the supervision and control of various branches of industry; to increased grants in aid of education; for the prevention of crime; and to the transference to the annual estimates of large items of expenditure previously charged upon the Consolidated Fund or the Civil List, and not directly cognisable by the House of Commons.[c] These additional expenditures of government have often given rise to imputations of extravagance which probably, in some cases, have not been unfounded, and has naturally led to various expedients, on the part of financial reformers, to effect reductions in the same. The constitutional course of appointing a Committee of Public Accounts will be noticed in its proper place. Such committees, however, are necessarily limited to the investigation of past transactions, and to the consideration of questions arising out of the management of financial matters by the executive government.

Proposed reduction in the public expenditure.

Not content with legitimate enquiries into past expenditure, attempts have occasionally been made to

[b] See statement of votes and expenditure for civil services from 1835 to 1869, Com. Pap. 1868–9, v. 35, p. 1138; *Ib.* 1868–9, v. 42, p. 627, &c. The actual increase in these estimates (after allowing for transfers of charges, debiting of departments with expenditure which was formerly paid out of growing produce of taxes, &c.) between 1848 and 1868, was in round numbers somewhat less than 5,000,000*l.*; and the further increase from 1868 to 1873 about 1,500,000*l.*, Com. Pap. 1874, v. 35, p. 151, &c. For a comparison between the civil service estimates in 1853 and in 1877, see Hans. D. v. 233, p. 659. H. Mann, Cost of Civil Service, Statist. Soc. Jour. v. 32, pp. 40–47. Remarks on increase of navy estimates, Hans. D. v. 192, p. 48.

[c] Com. Pap. 1868–9, v. 35, pp. 1138–1141. Hans. D. v. 233, pp. 659–662.

Committee to revise the estimates.

induce the House of Commons to appoint select committees to revise the estimates before they should be submitted to the Committee of Supply; but these attempts have been uniformly unsuccessful. In one or two instances, during the reign of William III., we read of the estimates, with other accounts, being referred to a select committee;[d] but since the doctrine of ministerial responsibility has been properly understood, no such proceedings have been permitted, as the following cases will show:—

Precedents.

On March 16, 1835, Mr. Hume moved to refer the navy estimates to a select committee, prior to their being submitted to the Committee of Supply. The chancellor of the exchequer (Sir Robert Peel) opposed the motion, declaring that 'it is for the executive government, from the information it receives from all quarters, diplomatic and otherwise, to judge of what the country ought to bear, and then to submit that opinion to the approbation of the House. The government might be required to form their judgment upon facts which it might not be consistent with their duty publicly to disclose, and they are bound to ask, in some instances, for not personal but political confidence from the House. To entrust all this to a finance committee would be to transfer the duty of the monarchy to the House of Commons.'[e] Sir James Graham, a leader of the Opposition, also opposed the motion, and it was negatived by a large majority. A few days afterwards Mr. Hume moved that the army and ordnance estimates be referred to a select committee, with a view to the reduction of expenditure, and for other purposes. The motion was opposed by Lord John Russell, the leader of the Opposition, and it was resisted by Sir Robert Peel on the ground that the executive government commands means of information which neither the House of Commons nor a select committee can have access to, and it is their constitutional province, on their own responsibility, to propose what the exigencies of the public service may require. Mr. Hume expressed his willingness to concede to the discretion of the government the amount of force to be maintained, but this did not satisfy Sir R. Peel, who pointed out the serious objections which existed to a transference of the constitutional revision of the whole House over the estimates to a committee of a few members, who could not exercise an efficient control, and whose

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[d] Hans. D. v. 165, p. 1325.

[e] Mir. of Parl. 1835, p. 364. And see similar remarks by Mr. Disraeli, when in Opposition, in 1857. Hans. D v. 146, p. 64. See also Grey, Parl. Gov. p. 78; Mill, Rep. Gov. p. 90.

assumed jurisdiction would nevertheless practically operate to withdraw the supply votes from the beneficial scrutiny of the committee of the whole House. After some further discussion the motion was withdrawn.[f] Precedents.

In 1857, a similar motion, to refer the army estimates to a select committee, not being seconded, fell to the ground.[g]

In 1847, notice being taken that 'a constant increase was going on in the miscellaneous estimates, which required some efficient check,' the government were asked to consent to the appointment of 'a committee, or other tribunal, to which the said estimates could be submitted, previously to the House being called upon to vote them in committee of supply.' The first lord of the Treasury (Lord John Russell) admitted that 'there was great room for enquiry, and early in the next session he hoped that a select committee would lay down some principles on which in future it would be safe to proceed.'[h] Accordingly, on February 22, 1848, Lord John Russell himself moved for the appointment of two committees, one to enquire into the expenditure of the navy, army and ordnance, the other into the miscellaneous expenditure of the country. These committees were restricted in their enquiries within constitutional limits; the government did not propose to abandon their discretion and responsibility in regard to the force required to be maintained in any department of the public service, but, with this proviso, they invited the fullest investigation into the details of the public expenditure, with a view to reductions to be made in future estimates.[i] Notwithstanding the difference of origin, these two committees were substantially the same as the finance committees which are now annually appointed by the House of Commons, and which have never sought to interfere with the estimates for the ensuing year, as laid upon the table of the House by command of the sovereign. Nevertheless, great public advantages have resulted from the labours of these committees, in the simplification and improvement of the estimates in future years, as well as in the reduction of the public expenditure.

On March 11, 1862, another attempt was made to induce the House of Commons to control the estimates, by Lord Robert Montagu, who moved to resolve that, in order to strengthen the check upon the government in regard to issues of money for any public service whatever, in excess of the sums voted by Parliament, as well as to secure the just appropriation of every payment voted by Parliament to its proper account, a committee be appointed, to be annually nominated by the Committee of Selection, for the

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[f] Mir. of Parl. 1835, pp. 588–592.
[g] Hans. D. v. 145, p. 843.
[h] *Ib.* v. 94, p. 185.
[i] *Ib.* v. 96, pp 1057–1076; v. 101, p. 713.

Precedents.

purpose of revising all estimates or accounts laid before Parliament, with instruction to consider of improving the present system of audit, and also to report to the House the exact period of the financial year when it would be desirable that the annual estimates should be presented to Parliament, so as to enable the necessary examination of such estimates or accounts to be completed and reported upon by the said committee before this House proceeds to sanction such estimates, &c., by a vote of payment in supply. This proposal that the estimates should undergo revision by a select committee was strenuously resisted by the government, as cutting at the root of our present political system. Any such committee would either supersede the House, in its duty of examining and passing the accounts, or it would supersede the government in its duty of submitting them. It would lead to a transference of the responsibility of the government for the estimates to an irresponsible body. The motion was negatived, on division, by a large majority.[j]

Motions for reduction of expenditure.

And here it may be suitable to refer to a class of motions which, although they do not concern the estimates for the current year, are, nevertheless, intended to effect a prospective reduction of the annual estimates, and to express the constitutional opinion of the House of Commons in regard to the increase of the public expenditure.

Precedents.

On July 16, 1849, it was moved by Mr. Henley to resolve, that a reduction of ten per cent. be made in all salaries in all the departments of government, at home and abroad. The motion was opposed by the chancellor of the exchequer, who contended that the public servants were not more highly paid than was necessary to their adequate remuneration. After debate, the motion was negatived by a large majority. But on April 12, 1850, on motion of Lord John Russell (the prime minister), a select committee was appointed to enquire into the salaries and emoluments of offices held, during the pleasure of the crown, by members of Parliament, and also into the salaries, fees, and pensions of judicial officers, and into the cost of the diplomatic service. This committee made a valuable report on the

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[j] Hans. D. v. 165, pp. 1306–1359. See also General Peel's remarks on question of referring estimates to a select committee, *Ib.* p. 940. On April 13, 1863, a motion to refer part 1. of the civil service estimates (on Public Works) to a select committee was negatived. See a similar case on May 26, 1864. On April 3, 1865, a motion to refer the whole civil service estimates to a select committee was proposed, and withdrawn after remarks from secretary of the Treasury. Hans. D. v. 178, p. 717.

duties of official persons of the highest rank, but generally adverse to a reduction of salaries.[k] Precedents.

On March 10, 1857, Mr. Gladstone moved to resolve that, in order to secure to the country that relief from taxation which it justly expects, it is necessary, in the judgment of this House, to revise and further reduce the expenditure of the state.' The House of Commons had, a few days previously, censured the government (which otherwise possessed the confidence of the House) for the conduct of affairs in China, and the government had determined to appeal to the country by a dissolution of Parliament. In order to enable them to carry on the public service until the assembling of a new Parliament, ministers applied to the House of Commons for a 'vote on account,' for four months. Having no objection to this course, and admitting it to be just and customary, Mr. Gladstone was yet of opinion that the proposed estimates were excessive. He accordingly sought, by this motion, to compel the government to re-consider their estimates before the re-assembling of Parliament, and to submit them, with considerable reductions, to the judgment of the new House of Commons. The House did not concur with Mr. Gladstone as to the propriety or expediency of this motion, and it was negatived without a division.

On June 3, 1862, Mr. Stansfeld moved to resolve, that the national expenditure is capable of reduction, without compromising the safety, independence, or legitimate influence of the country. In amendment, Lord Palmerston (the prime minister) moved that the House, sensible of the necessity of economy, is at the same time mindful of its obligation to provide for the security of the country at home and the protection of its interests abroad, and that it observes with satisfaction the decrease already effected in the national expenditure, and trusts such further diminution may be made in it as the future state of things may warrant. Besides this amendment, no less than five other amendments, either to Mr. Stansfeld's, or to Lord Palmerston's motion, stood upon the notice paper. One of them (Mr. Walpole's) was regarded by Lord Palmerston as equivalent to a vote of want of confidence; he therefore suggested that it should have the priority. The members who were about to propose the other amendments agreed to withhold them; but Mr. Walpole declared that he did not intend a vote of censure by his motion, yet, after Lord Palmerston's statement respecting it, he was not prepared to encounter the responsibilities which would be entailed by the success of his amendment, and therefore he would not move it. Lord Palmerston, in justifying his

[k] Com. Pap. 1850, v. 15, p. 179. See Treasury Minute of May 20, 1851, recording the steps which have been taken for giving effect to the recommendations of this committee. *Ib.* 1851, v. 31, p. 379.

Precedents.

own amendment, said that he hoped that the government would next year be able to present diminished estimates to Parliament. After a long debate, Lord Palmerston's amendment was carried by a large majority. In the two following sessions, upon opening the budget, the chancellor of the exchequer referred to this resolution, and showed that the government had succeeded in effecting considerable reductions in the estimates for the ensuing year, with a reasonable hope of further retrenchment in future.[l] Upon the accession of the Derby administration to office, in 1866, Mr. Disraeli, the new chancellor of the exchequer, took occasion to advert to this resolution, and to assure the House that the financial policy of the government would be framed in accordance therewith.[m]

On February 11, 1864, Sir H. Willoughby called the attention of the House to the enormous increase of taxation and expenditure within the last few years. The annual average of the public expenditure during the years 1842 to 1846 was 50,250,000*l.*, whilst in 1864 it amounted to nearly 70 millions. This amount of taxation was levied in a time of peace, and was entirely independent of the local taxation, which amounted to nearly twenty millions additional! In giving his explanations on this subject, the chancellor of the exchequer stated that, owing to the great increase in the items of the civil expenditure, the task of the Treasury in controlling the same had become increasingly onerous and difficult, and could only be effectually performed when the government was sustained by the House of Commons in its efforts to resist additional expenditure.'[n]

On March 1, 1864, Mr. Marsh moved that the civil service and miscellaneous estimates had been, for many years, rapidly increasing, and ought to be reduced. After explanations from the secretary of the Treasury as to the causes which had occasioned this increase, and rendered it unavoidable, a brief debate ensued, which ended in the withdrawal of the motion.

On February 26, 1866, Mr. White moved to resolve, that the expenditure of the government has, of late years, been excessive; that it is taken in great measure out of the earnings of the people, &c. After a long debate, the motion was withdrawn.

On February 18, 1873, Mr. Vernon Harcourt moved, that the present rate of public expenditure is excessive, and should be reduced, with a view to the diminution of the public burthens. An amendment was proposed by government to appoint a committee of inquiry into civil service expenditure, to which the House agreed.

The first classification of the miscellaneous civil ser-

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[l] Hans. D. v. 170, p. 200; *Ib.* v. 174, p. 588.

[m] *Ib.* v. 184, p. 1280.

[n] *Ib.* v. 173, p. 477.

vice estimates was made in 1824. A new classification was made in 1843, which still continues in force. But pursuant to the recommendation of the Committee of Public Accounts in 1867, the various sub-heads are now classified for the purposes of the appropriation audit, so as to define the expenditure to be controlled and accounted for by each department of state.[o]

Contents of the estimates.

The estimates of the supplies required by government for the service of the year are divided into separate votes, or resolutions, which appropriate specified sums for services specially defined, and for the period of one year. Some of the votes are for very large amounts, but, practically, there is no more difficulty in dealing with such votes than with any others, inasmuch as each vote is accompanied, in the printed estimates, with a list of the particular items, or heads, of expenditure, which are intended to be defrayed out of the same. In addition to the information thus afforded in regard to the proposed expenditure, the printed estimates contain numerous explanatory tables and notes, in relation to particular branches of expenditure: and preliminary abstracts, lists of accounting departments, and statements of grants in aid of local taxation and expenditure. The estimates are now submitted to the House of Commons in much greater detail than formerly, in order to meet the increasing demand for full and accurate information upon all matters which concern the public expenditure.[p]

Considerable improvements have recently been made in the framing of the army and navy estimates.[q] The

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[o] Com. Pap. 1868-9, v. 35, p 1137. Estimates for 1877-8, Civ. Serv. and Revenue Dpts., 138 votes; army, 25 votes; navy, 17 votes; total, 180 votes.

[p] Hans. D. v. 167, p. 56; *Ib.* v. 171, p. 322.

[q] Rep. Sel. Com^e. on Navy, Army, and Ordnance Estimates. Com. Pap. 1847-48, v. 21; 1849, v. 9; 1850, v. 10. Rep. Com^e. on Pub. Accts. Com. Pap. 1864, v. 8, p. 340; *Ib.* 1865, v. 10, p. 41.

Civil Service estimates.

estimates for miscellaneous civil services[r] are now arranged under seven heads, or classes, of subjects, viz.:—1. Public works and buildings; 2. Salaries and expenses of public departments; 3. Law and justice; 4. Education, science, and art; 5. Colonial, consular, and other foreign services; 6. Superannuation and retired allowances, and gratuities for charitable and other purposes; 7. Miscellaneous, special, and temporary objects. Then follows, as a separate class, estimates for the revenue departments, Post-office packet and telegraph service. And a general index to the entire estimates is appended.

It is worthy of remark that the English estimates, as a general rule, contain but few grants in aid of private charities or local benevolent institutions. It is considered that the practical result of governmental aid to such institutions would be to dry up the sources of private benevolence, upon which local charities must chiefly depend, and to weaken the motives for their economical management, thereby seriously injuring instead of promoting their welfare.[s]

The lords of the Treasury are of opinion that hereafter it will be more convenient, not only as a means of facilitating discussion on the estimates in the House of Commons, but also in the subsequent preparation and audit of the appropriation accounts of the expenditure incurred, that the services conducted under the responsibility of distinct departments of the government should, as far as possible, be grouped together in a distinct series of votes. This opinion was concurred in by the Committee of Public Accounts,[t] and has since been car-

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[r] For account of misc. civ. serv. estimates, their classification, gradual increase and revision, with view to reduction, see Peto on Taxation, p. 310. Rpts. of Com^e^. on Misc. Exp. in 1847–8; and Public Accts. in 1861 and 1862. Mr. Gladstone, Hans. D. v. 174, p. 538.

[s] Rep. Com^e^. Misc. Exp. pp. 27, 35. Com. Pap. 1847–8, v. 18. Hans. D. v. 166, p. 1663. Peto on Taxation, p. 363.

[t] Treas. Minute, June 22, 1866. Com. Pap. 1866, v. 39, p. 143, &c. Rep. Com. Pub. Accts. 1866, v. 7, pp. 557, 564. Special Rep. (Exch. and Audit Bill), Com. Pap. 1866, v. 7, Evid. 193, 194, 207.

ried out.[u] The civil service estimates are now preceded by a statement showing the services in each class for which the several departments will be required to account, and to each vote is appended the sub-heads under which it will be accounted for. Moreover, pursuant to the Act 31 Vict. c. 9, in regard to extra receipts, votes for the precise amount required for each department are taken, while the receipts, heretofore applied in reduction of said amounts, are now paid into the exchequer. This system has caused a considerable increase in the nominal amount of the votes, but it enables the House to exercise a greater control over the expenditure of the various departments.[v]

Classification of estimates.

A careful and discriminative classification of votes, and items of votes, in the annual estimates, materially facilitates the classification of payments, limits the discretion of accountants, and leaves less room for differences of opinion in regard to the vote to which a particular payment is chargeable.[w] It is therefore of great importance that no pains should be spared in the judicious preparation of the estimates.

When the estimates have been presented to the House, they are ordered to be printed for the use of members, and are referred to the Committee of Supply.

Committee of Supply.

The sittings of the Committee of Supply then commence.[x] As a general rule, no one but a minister of the crown is competent to move a grant of money.[y]

There is one exception to this rule. By the usage of Parliament, the estimates for the British Museum, after they have been approved by the Treasury, are invariably introduced and moved by some member of the governing body of that institution, irrespective of his political opinions, the preference being given to one who is not

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[u] Hans. D. v. 197, p. 1191. Civ. Serv. Est. 1868–9. and 1869–70.

[v] Hans. D. v. 191, p. 1161. Civ. Serv. Est. 1869–70. Com. Pap. 1868–9, v. 42, pp. 3, 12.

[w] Rep. Com[s]. Pub. Moneys, Com. Pap. 1857, 2nd Sess. v. 9, pp. 527, 577.

[x] But in 1869 a vote on account was taken before the presentation of the estimates, see *ante*, p. 740.

[y] Hans. D. v. 207, p. 1892.

Estimates for British Museum.

an ex-officio trustee.[a] This is confessedly an anomalous practice (see Lord H. Lennox's motion on the subject in the Commons on March 18, 1862); but it has the advantage of ensuring, as the representative in the House of this great national collection, one who is familiar with its multifarious details, and able to afford minute information concerning its actual condition and requirements. On this account the administration have been hitherto unwilling to change this arrangement for one more in accordance with the principles of parliamentary government.[a]

The member of the administration who is charged with the duty of representing the particular department on behalf of which the grants are proposed, first explains to the committee whatever may be necessary to satisfy them as to the general expediency and propriety of the class of estimates under consideration, and then proceeds to propose each grant in succession. When the navy or army estimates are under the consideration of the committee, it is customary to permit members to animadvert upon the whole estimates, or upon naval or military matters generally, before the first vote is taken; and this opportunity is usually taken by the mover, to review the whole policy of the estimates. But, after the first vote, the discussion is strictly confined to the particular vote before the committee.[b] The civil service estimates have hitherto been considered to be of too miscellaneous a description to be dealt with in a general statement; accordingly the rule of limiting discussion to the vote or item under consideration is adhered to throughout.[c]

But in 1877, in deference to opinions expressed in the House of Commons, the chancellor of the exchequer undertook that the secretary of the treasury,

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[a] Mir. of Parl. 1840, p. 4537; Hans. D. v. 155, p. 430; *Ib.* v. 167, p. 456.

[a] Hans. D. v. 169, p. 1655; *Ib.* v. 176, p. 1358; *Ib.* v. 184, pp. 1557, 1563; v. 191, p. 301; v. 219, p. 1595.

[b] *Ib.* v. 181, pp. 1321, 1525; v. 223, p. 656.

[c] *Ib.* v. 181, p. 1783; v. 191, p. 984. And see Rep. Com^e. on Parl. Business, Com. Pap. 1871, v. 9, p. 29; May, Parl. Prac. ed. 1883, p. 677.

before moving these estimates, should give some general explanations upon the progressive increase of civil service expenditure.[d] This was accordingly done on April 5, 1877, on motion that the Speaker do leave the chair to enable the House to resolve itself into Committee of Supply. On the same occasion on July 10, the vice-president of the Education Department proposed to make a general statement, preliminary to the discussion of the education votes; but, as leading members objected that due notice had not been given of this intention, this course was not followed.[e]

Explanations on going into Committee of Supply.

Each resolution of supply is proposed from the chair in the following words: 'That a sum not exceeding ——*l.*[f] be granted to her Majesty' for the object specified in the particular vote in the printed estimates. This motion may be either agreed to or negatived, but it is not competent for the committee to make any alteration therein which could change the destination of the vote,[g] or increase the amount proposed,[h] because the House of Commons can only vote money pursuant to the recommendation of the crown. In like manner, it is irregular to move an instruction to the Committee of Supply, as it is only competent for the committee to consider the estimates which have been submitted to the consideration of the House by the crown.[i]

Resolutions in Committee of Supply.

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[d] Hans. D. v. 232, p. 1040; v. 233, p. 125.

[e] *Ib.* v. 235, p. 1047.

[f] Votes of Parliament are not taken for fractions of a pound.

[g] The Speaker, Hans. D. v. 71, p. 295. *Ib.* v. 169, p. 1774; v. 173, p. 1282.

[h] Mir. of Parl. 1834, p. 615; Hans. D. v. 148, p. 392. So a motion to increase the number of men in a vote on the army estimates, though professedly intended merely to rectify an error in the calculations of ministers, was declared to be irregular, *Ib.* v. 169, p. 1267; and see *ante*, p. 702.

[i] The Speaker, Mir. of Parl. 1828, p. 1972. But see proceedings in case of Capt. Ross, the Arctic navigator, to obtain for him a grant of 5,000*l.* Upon his petitioning the House of Commons, with the consent of the crown, his petition was referred to a select com^e., reported upon favourably, and then, his petition having been previously referred to the Com^e. of Supply, a vote was agreed to in supply on motion of a private member, to grant him the sum recommended by the select committee. *Ib.* 1834, pp. 608, 707, 843, 2864. And see a similar case in regard to a vote proposed by Mr. Hume, in Com^e. of

Instructions to Committee of Supply.

On May 18, 1863, ministers proposed a vote in Committee of Supply on account of the packet service, to which was appended a proviso that no part of the same should be applied to pay Mr. Churchward for postal services under a contract which had been condemned by the House itself.[j] An amendment was offered to omit this proviso, but it was objected to as being irregular. The chairman, however, ruled that it was in order, inasmuch as 'it did not enlarge or divert the vote from any purpose.'[k] In answer to an objection made to the proviso itself, the chancellor of the exchequer contended that, because a condition of this kind might be proposed on behalf of the crown, it did not follow that a similar proposal could be made by an independent member. Moreover, the proposal of the crown did not affect the service itself, and was no precedent for any vote which might limit or alter that service.[l] The ministerial proposition was accordingly agreed to.

On May 31, 1867, a resolution in Committee of Supply, to grant 20,000*l.* towards the expense of erecting a building for the use of the University of London, was amended on division, by adding a proviso, 'That no part of such sum shall be applied to the erection of any building according to either of the designs now exhibited.' Ministers opposed this amendment, but after the division agreed to act upon it. Whereupon by common consent the proviso was struck out when the resolution was reported.[m]

Votes in supply.

The votes in Committee of Supply are usually proposed for large sums for particular heads of services, but as the separate items for which the supply is required are detailed in the estimates, the practice of the House (as altered in 1857) permits of a question being put that any item objected to 'be omitted from the proposed vote,' or, 'be reduced by the sum of ——*l.*,' as the case may be. Where a general reduction of a particular vote is proposed, the question is first put upon the smallest amount proposed to be granted; and, in like manner, if more than one amendment be offered, conformably to the ancient order of the House, 'That where there comes a question between the greater and

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Supply, for the purchase of 1250 copies of Marshall's Digest of Statistics. *Ib.* 1833, p. 1513.

[j] See particulars of this case, *post*, p. 772.

[k] Hans. D. v. 170, p. 1884.

[l] *Ib.* p. 2036.

[m] *Ib.* v. 187, pp. 1463-1469, 1547, 1661; v. 212, p. 699.

lesser sum, or the longer and shorter time, the least sum and the longest time ought first to be put to the question.'[n] After a motion for the reduction of a particular item in a vote has been proposed from the chair, it is not competent to propose a motion in relation to, or to debate, a previous item,[o] but any question in regard to the same may be raised upon the report of the resolutions to the House.

Reduction of a vote.

Formerly when a motion had been put from the chair to omit or reduce an item in a vote, it was no longer competent to move for a reduction of the vote generally.[p] But in 1868 this practice was altered, and a rule adopted to permit an amendment for a reduction of the whole vote, after a decision of the committee upon a particular item, on the ground that members ought to be always free to adopt the more constitutional course of moving the general reduction of a vote, leaving it to ministers to determine in what way the retrenchment could be best carried into effect. But after a question has been put for a reduction of the whole vote no motion can be made to omit or reduce any item.[q] But a motion for the reduction of a vote by a particular amount, if negatived, may be followed by another for a smaller reduction, provided only that a distinct and separate issue is thereby submitted.[r]

Motions in Committee of Supply.

It is irregular to move in Committee of Supply for the adoption of a general resolution in regard to any particular vote,[s] or to move that a particular vote be referred to a select committee. But a vote can be reduced, with the ulterior object of moving in the House for the appointment of a select committee to enquire into the question connected therewith.[t]

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[n] May, Parl. Prac. ed. 1883, p. 671. Hans. D. v. 172, p. 1026.

[o] *Ib.* v. 179, p. 1286.

[p] *Ib.* v. 148, p. 1083; v. 191, pp. 1000-1013.

[q] *Ib.* pp. 1025-1033, 1464-1466.

[r] *Ib.* v. 236, p. 592.

[s] Mir. of Parl. 1831, p. 1826; 1831 2, p. 3472.

[t] Hans. D. v. 172, p. 131.

Postponement of a vote.

A vote proposed in Committee of Supply may not, in point of form, be postponed, because there is no period to which it can be postponed.[u] But the mover may, with the consent of the committee, withdraw it, and submit it again on another day, with or without alteration, and either as a distinct vote, or in separate items.[v]

On June 15, 1863, Lord Palmerston moved, in Committee of Supply, for the adoption of a vote of 67,000*l.* to purchase land at South Kensington. This formed part of a general proposition for the purchase of the International Exhibition building, the entire cost of which had been stated in the estimates at 484,000*l.* Of this amount, the one item of land alone had been estimated at 172,000*l.*; and objection was taken that the government had no right, suddenly, and without previous notice, to ask for a *less sum* than they had proposed in the estimates to apply for. But it was ruled by the chairman, and subsequently by the Speaker, that there was nothing irregular in this proceeding.[w] On June 8, 1865, the vote for temporary commissions was taken for 30,702*l.*, being 5,000*l.* *more* than was set down in the estimates. No explanation was given as to the reason for this alteration.[x]

In supply money is voted only for the current year. Money votes in other committees of the whole House.

The Committee of Supply considers the money to be voted for the *current year*. Where the proposed grant is not part of the service of the current year—as, for instance, a permanent increase to judges' salaries—it is more regular to propose it in any other committee of the whole House than the Committee of Supply, provided the Queen's recommendation is first signified, and

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[u] Hans. D. v. 159, p. 549.

[v] Mir. of Parl. 1830, p. 1498; 1840, p. 2867.

[w] Hans. D. v. 171, p. 937. *Ib.* v. 172, p. 74. On another occasion, the government, without previous notice, reduced an intended vote by 33,000*l.* on account of circumstances which had transpired since the framing of the estimates. *Ib.* v. 174, p. 830. Again, on May 9, 1864, the vote for Misc. Services (Army) was taken for 5,000*l.* less than the original estimate, but the proceeding excited no remark. Smith's Parl. Rememb. 1864, p. 81. Hans. D. v. 218, p. 196.

[x] Smith, Parl. Rememb. 1865, p. 91.

on their report a Bill is ordered, or a clause inserted in a Bill already before the House.[y]

Money votes.

Under such circumstances it has been considered allowable for a private member to move to increase an amount proposed by ministers on behalf of a service which had been recommended by the crown, in general terms, 'to the liberality of Parliament,' and to propose an extension of the grant for a longer period.[z] But if the royal message itself indicated the particular amount recommended to be granted, it would not be competent for a private member to propose an extension of the same.[a]

On June 8, 1869, an independent member moved for the appointment of a select committee to enquire into the causes of the great excess of cost in prosecuting the war with Abyssinia over the estimates submitted to Parliament. The motion was seconded by the ex-minister for India, concurred in by the government, and agreed to without a division.[b] This committee reported the evidence taken on July 31, with a recommendation that they should be reappointed in the next session.[c]

On February 18, 1870, the House of Commons reappointed this select committee, which reported on July 29. The report consisted of a bare recital of facts to show the enormous excess of expenditure for the service over its estimated cost; but inasmuch as the highest military authorities consulted on this point agreed, 'that the nature of the work assigned to the expedition, and the peculiar circumstances under which we made war in Abyssinia, rendered even an approximate estimate of the cost utterly impossible,' the committee refrained from imputing blame to anyone concerned. The draft reports, and evidence appended to this report, contain some valuable suggestions for the future guidance of large military operations by the War Office and the Admiralty respectively.[d]

The entire sums proposed to be granted for particular services are not always voted at the same time, but a certain sum is occasionally voted either 'on account' or as a vote of credit.

Votes of credit

Votes of credit are usually asked for on behalf of contemplated war expenditure, when it is necessary to have ample funds on hand, and impossible to determine

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[y] See May's Prac. ed. 1883, p. 693. and *ante*, p. 702.

[z] Case of Mr. Perceval's Family, Parl. Deb. v. 23, pp. 187–202.

[a] Hans. D. v. 148, pp. 387–392;

[b] Hans. D. v. 196, pp. 1419–1439.

[c] Com. Pap. 1868–69, v. 6, p. 1.

[d] *Ib.* 1870, v. 5, p. 1.

beforehand the exact amount required.[e] Nevertheless, they should be strictly limited both as to their amount and object. In two or three instances only between the Revolution and 1735 were unlimited votes of credit given to the ministers of the crown for army or navy purposes. Ever since, when the Commons have granted a vote of credit, they have named a specific sum in the Appropriation Act, and have prescribed the purpose to which it must be applied.[f]

Votes 'on account.'

Votes 'on account' were formerly restricted to occasions of unexpected emergency, arising out of ministerial changes, when it was desirable to place at the disposal of government funds for the public service without specifically appropriating the same to particular items of expenditure. In such cases it is usual to vote a portion only of the yearly estimates, and in the following session to enquire into the expenditure thereof, in order to ascertain that it was duly appropriated to legitimate purposes.[g] When Parliament is about to be dissolved, upon a ministerial crisis, it is obviously improper to call upon the House of Commons to vote either the full amount or all the details of the proposed estimates, and so commit the country to the financial policy of ministers whose fate is about to be determined by a general election. The duty of finally deciding upon these estimates should be reserved for the new House of Commons. Meanwhile the supply of credit should be restricted to such an amount as may be absolutely required for the public service, until the reassembling of Parliament, and the vote 'on account' should not be regarded as in any degree pledging the House to an approval of the entire estimates.[h]

[e] May's Prac. ed. 1883, p. 680. Hans. D. v. 203, p. 1440.

[f] Clode, Mil. Forc. of the Crown, v. 1, pp. 124-127; Com. Pap. 1868-9, v. 35, p. 1171; and see *post*, p. 823.

[g] See 3 Hatsell, pp. 213-215.

[h] Hans. D. v. 144, p. 2170. *Ib.* v. 158, p. 1667. This course was followed, upon pending ministerial changes, in 1841, 1857, and 1859. See May's Prac. ed. 1883, p. 678.

Surrender of unexpended balance.

Within the last few years, however, the practice of taking votes 'on account' has become general.[i] This is owing to the introduction of a new rule, making all grants in supply applicable only to 'payments to be made within the financial year,' and requiring the government to surrender into the exchequer, at the end of the year, all unexpended balances. This change of system was completely effected at the expiration of the financial year terminating on March 31, 1863, when, 'for the first time in our financial history, all the services were required to surrender the balances standing to their credit,' an arrangement which has necessitated an application to Parliament, before the close of the first quarter of the new financial year, for a vote 'on account,' to meet the ordinary charges accruing therein.[j] But the balances are not surrendered until the Public Accounts Committee have reported upon the various appropriation accounts of the past financial year, and decided what is the right sum to surrender. Meanwhile they are available to meet expenditure of the said year, which has been actually incurred, but which has not yet been brought to account.[k] But this practice is not altogether free from objection. When such a vote is submitted, it is always for one large sum 'on account of the following civil services;' and although allowable, it is neither usual nor convenient to discuss the items in detail.[l]

On July 10, 1863, on a vote for 3,781*l.* to complete a large amount voted 'on account' for civil contingencies, an item of 6,000*l.* was objected to, and the government consented to its being omitted. But as they could not reduce a smaller sum by a larger, the vote for 3,781*l.* was withdrawn altogether.[m]

The House is thereby deprived of the opportunity of

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[i] Com. Pap. 1868–9, v. 35, p. 142.

[j] Chanc. of Exch. in Hans. D. v. 170, p. 209. *Ib.* v. 195, p. 524; v. 210, p. 607.

[k] 5th Rep. Com^e. Pub. Acc. Com. Pap. 1871, v. 11, p. 613.

[l] Hans. D. v. 206, p. 1368.

[m] *Ib.* v. 172, p. 544. See also a discussion on 'Votes on Account,' *Ib.* v. 178, pp. 733-741.

Votes 'on account.'

considering, adequately, the particular items of any such vote, until, on a future occasion, definitive votes are taken for the balances required for each particular service. And when the completion of the vote is asked for, it has been urged that it may be late in the session, when the attendance of members is thin, and the disposition of the House adverse to minute investigation.[n] But the government have endeavoured to meet this objection by taking a vote 'on account' for two or three months only, and by a timely introduction of votes for balances.[o]

On March 27, 1863, the chancellor of the exchequer said, 'The practice to vote "on account" was entirely novel, because it was incident to a system which had been adopted for the purpose of giving effect to an important administrative improvement. It was necessary to prepare a list of votes on which probable advances would be required before there was an opportunity of bringing them definitely before the House.' That 'was a practice to which recurrence would necessarily have to be had in future years.'[p]

It is an established rule that a vote 'on account' should involve no new principle, but should merely provide for the continuation of services which had been sanctioned in the previous year; and it is the practice not to take more than two or three months' supply, except in certain particular cases of public emergency; so that the committee, in agreeing to votes 'on account,' are not pledged to the estimates for the year, in anticipation of the opportunity to be afterwards afforded of voting them in detail.[q]

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[n] See Mr. A. Smith's motion, on June 29, 1861, deprecating this practice, and observations thereon in T. Smith's Parl. Rememb. 1861, p. 135. See also Mr. Butt's motion on March 19, 1877.

[o] Hans. D. v. 200, p. 1583.

[p] *Ib.* v. 170, p. 108. On this occasion, through some casual inadvertence, it happened that later on at the same sitting of the committee in which votes 'on account' of certain services were taken, definitive votes of the balances themselves were passed through Committee of Supply. This gave rise to much angry comment. *Ib.* v. 169, pp. 1953, 1967; v. 170, pp. 105–109.

[q] *Ib.* v. 181, p. 1780; and see *Ib.* v. 195, p. 523; v. 197, p. 1440; v. 200, p. 1583; v. 205, p. 1034; v. 211, p. 1049.

On May 28, 1868, May 25, 1871, June 25, 1875, and on June 28, 1877, a second vote 'on account' of the civil services was taken, the former vote, which was to defray these services in the one case for two months, and in the other for six weeks only, having been exhausted, so that a further advance, for a limited period, became necessary because of unavoidable delays in proceeding upon the estimates. But such a practice, however unavoidable under certain circumstances, is admitted to be objectionable.[r]

Responsibility for grant of supply.

While the government are solely responsible for the propriety and extent of any application to the House to grant supplies, the Commons are themselves responsible for voting the same.[s] The House looks to the executive to state what is wanted, and to make known to them all that is necessary to satisfy them of the expediency of the grant. If the information communicated be not full and satisfactory, it is always in the power of the House to withhold the grant of any particular item until they are satisfied with the reasons given for it.[t]

Increasing or restoring an item in supply.

It is the uniform practice of the House if, upon reconsideration on the report, it is thought expedient to increase the sum granted in Committee of Supply, or to restore an item which had been rejected therein, to recommit the resolution for that purpose.[u]

On July 18, 1870, sixteen votes in Committee of Supply, which had been incorrectly taken for higher amounts than had been intended, were severally amended, upon the report, by substituting the proper sums.[v]

It is the peculiar province of the government to decide upon the several amounts required to carry on the public service and to maintain the credit of the country at home and abroad. None others are equally competent to form a judgment on this question. On the other hand, the vigilant oversight which is constitutionally exercised by the House of Commons over the public expenditure is a

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[r] Hans. D. v. 192, p. 1010; v. 206, p. 1309; v. 225, p. 623.

[s] *Ib.* v. 191, pp. 1192, 1748, 1770.

[t] Smith's Parl. Rememb. 1862, p. 111.

[u] 3 Hats. Prec. p. 180; Hans. D. v. 150, p. 1502.

[v] *Ib.* v. 203, p. 465.

Effects of debates in supply on the public expenditure.

continual check upon ministers, and serves to prevent profligate and extravagant outlay,[w] which, in times past, when this control was less stringently applied, was of too frequent occurrence. The debates on the estimates, though generally but thinly attended, have been productive of incalculable public advantage.

The late Joseph Hume was pre-eminently distinguished, throughout his long parliamentary career, for his untiring vigilance and patient labour in the cause of economy and retrenchment. Adequately to fulfil such a duty, time, energy, and labour must be devoted to the wearying, irksome, and self-denying work of becoming thoroughly acquainted with a vast mass of details, by following from point to point every item of public expenditure, and bringing to bear upon it the force of independent judgment and the light of public opinion.[x]

For, while it is impossible for a numerous representative assembly to scrutinise details of expenditure, and to form an accurate opinion in regard to all the items embraced in the estimates, equally devoid of extravagance or parsimony, nevertheless the moral influence which is exercised over the government by criticising the votes submitted for adoption in Committee of Supply is a more efficient and desirable restraint upon improper expenditure than even the formal rejection of particular votes.[y]

Thus, on February 26, 1863, the government would have been defeated on an amendment to omit an item of 134,000*l.* for iron to armour-plate wooden ships, had not Lord Palmerston given a distinct pledge that no more of such ships should be built without the express sanction of the House.[z]

See Smith's Parl. Rememb. 1861, p. 154; and *Ib.* p. 146, Chatham Dockyard.

[x] Mr. Gladstone's eulogy upon Mr. Hume, Hans. D. v. 181, p. 1134. In commemoration of Mr. Hume's great public services, the House of Com. requested that his bust might be placed within the precincts of the House. *Ib.* v. 184, pp. 485 494, 2166. It was placed in the Library. *Ib.* v. 186, p. 816.

[y] Sir S. Northcote, in Hans. D. v. 165, p. 890. Mr. Childers, *Ib.* v. 192, p. 938.

[z] *Ib.* v. 169, p. 853. See a further discussion on the same subject on March 12, 1863. And see Sir R. Peel's remarks on the Irish 'Agricultural vote.' *Ib.* v. 179, p. 1251.

The function of the House of Commons, in matters of supply, is to exert a watchful but general control over the executive government, with a view to prevent unnecessary outlay, and to check abuses in the public expenditure; leaving to the ministers of the crown the responsibility, which properly belongs to their position, of asking for such supplies as the necessities of the state require, and of enforcing to the utmost a strict economy in the use of the funds entrusted to them.[a]

Controlling influence of the House.

In the new edition of Lord Grey's valuable essay on Parliamentary Government (pp. 115, 221), he points out the evils arising from the weakness of ministers in the House of Commons, as exemplified in the extent to which votes in supply have become less the expression of the deliberate views of the servants of the crown as to what would be best for the public service than of the opinion entertained at the moment by a fluctuating majority, a state of things which must unavoidably engender jobbery and reckless expenditure of the public treasure.[b]

In point of fact, since the introduction of parliamentary government, it has only been on rare and comparatively unimportant occasions that the demands of the crown for supplies for particular services have not been complied with. As a general rule, whatever sums ministers have stated to be required for the use of the state, the Commons have freely granted.

Items in the estimates rejected by the Commons.

In proof of this the following instances may be cited from the parliamentary proceedings since 1857, as being the only cases wherein particular items in the annual estimates have been rejected by the House of Commons in Committee of Supply:

Precedents.

On May 10, 1858, an item of 73,000*l.* for the erection of a new military hospital at Netley was negatived. On June 3, 1858, an item of 1,000*l.* to defray the salary of the registrar of Sasines was rejected. But next day, on report of the resolutions, the House directed that the resolution which had contained this item should be re-committed. Whereupon, on July 15, it was re-voted with the addition of the salary previously struck out.[c] On July 13, 1858,

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[a] See Grey, Parl. Gov. new ed. p. 88.

[b] And see Ld. Grey's Speech in Hans. D. v. 161, p. 189; v. 165, p. 940.

[c] Hans. D. v. 150, p. 1494. Com. Jour. v. 113, pp. 211, 314, 320.

Rejection of particular items by the House.

the House, on the report of resolutions from the Committee of Supply, disallowed an item of 300*l.*, to defray the salary of the travelling agent of the National Gallery. On August 1, 1859, the vote of 2,361*l.* for the Statute Law Consolidation Commission was rejected.[d] In 1860, the following items were rejected: On July 23, 1,200*l.* for erecting a building to hold the Wellington funeral car; on August 3, 1,600*l.* for two statues of British sovereigns in the new Houses of Parliament; on August 14, 800*l.* for extra clerks at the Board of Trade; and on August 15, the vote to defray the salary of paymaster of civil services in Ireland was reduced by 1,000*l.*, but this was agreed to by the government, as they contemplated the abolition of the office.[e] In 1861, the government submitted a smaller vote (340*l.*) for the removal of the Wellington car to the crypt of St. Paul's, which was agreed to. The vote for the statues in the new Houses of Parliament was also again submitted and agreed to.[f] In the same year, on June 6, the navy estimates were reduced by 3,225*l.*, being an item for the extension of the Chatham dockyard, a work which, if sanctioned by the House, would have occasioned an ultimate expenditure of over 900,000*l.* In 1862, on March 6, a vote of 10,787*l.* for enlarging the Royal Military College at Sandhurst was negatived, but upon the report of the resolutions, the one which had contained this item was re-committed, and upon satisfactory explanations from government, the vote, as originally proposed, was agreed to on March 13. On April 28, a vote of 5,000*l.* for Highland roads and bridges was negatived. In 1863, on June 4, an item of 400*l.* for a clerk of the works at Constantinople was rejected; on July 2, a vote of 105,000*l.* for the purchase, &c. of the Exhibition buildings at South Kensington was negatived;[g] on July 10, a proposed item of 6,000*l.* for expenses connected with the Thames Embankment Bill of 1862, being objected to, was withdrawn. In 1864, on May 2 (upon motion of the secretary of the Admiralty), an item of 5,000*l.* intended to be applied towards the construction of a dock at Malta was negatived, to admit of further information being obtained as to the proper site of the dock, agreeably to suggestions made by Opposition members in the House of Commons;[h] on May 30, a vote of 4,000*l.* for the erection of a lunatic asylum in the Isle of Man (but in the following session this vote was again proposed and agreed to),[i] and on June 6, a vote of 10,000*l.* (on account of a total estimate of 150,000*l.*) towards the erection of a new National Gallery at Burling-

[d] Smith's Parl. Rememb. v. 2, p. 150.

[e] *Ib.* 1861, p. 132; Hans. D. v. 160, p. 1325.

[f] Hans. D. v. 164, pp. 151, 170.

[g] For an account of rejection of this vote, see 19th Cen. v. 2, p. 66.

[h] Hans. D. v. 177, pp 1164, 1173.

[i] *Ib.* v. 179, p. 597.

ton House, were severally negatived. In 1865, and in 1866, all the supply votes submitted by government were agreed to by the House of Commons. In 1867, on July 22, the vote to defray expenses of suppressing the slave trade was reduced by 700*l.*, with a view to occasion a reduction of the naval squadron on the west coast of Africa.[j]

Bills involving money charges

Independently, in the first instance, of the Committee of Supply, there is another mode of initiating proceedings for the grant of public money—namely, by the introduction of Bills for the construction of public works, the establishment of new institutions, or for other purposes, that necessitate, to a greater or less extent, new charges upon the people. Sometimes the government is authorised by such Bills to undertake the construction of certain public works, the cost of which is to be defrayed out of the Consolidated Fund.[k]

But on July 30, 1866, in deference to objections made by members of the House of Commons to the introduction, late in the session, of a Bill to provide for the construction of certain additional works connected with this great scheme of national defence, the government withdrew the Bill, and agreed to proceed next year in the ordinary form of presenting an estimate for these works, and voting the same in Committee of Supply.[l]

But usually such Bills contain a clause providing that the charges in question shall be defrayed 'out of moneys to be voted by Parliament.' Hitherto it has been customary to permit Bills of this description to be introduced by private members, without reference to the government; but this practice led to so much irregularity that, in the session of 1866, a new standing order was adopted, requiring the recommendation of the crown to be given before the House will entertain any motion that will involve a charge upon the public revenue whether direct or out of moneys to be provided

Must be recommended by the crown.

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[j] Hans. D. v. 188, p. 1900, 2074; and see *Ib.* v. 200, p. 833.

[k] See the Fortifications Expenses Acts, passed in 1860 and following years to 1869.

[l] See *post*, p. 770.

by Parliament.[m] This order is intended to place the responsibility for such bills, if not their initiation, in the hands of the government. But, under any circumstances, it will be incumbent upon the House of Commons to exercise a strict oversight and control over measures of this kind, as well as over the direct financial propositions of ministers.

Addresses for advance of money.

Sometimes the House of Commons, either with or without the previous recommendation of the crown, as the case may be, agrees to address the crown to advance money for some particular purpose, with an assurance that the expenses to be incurred will be afterwards made good by the House. But this practice is only justifiable under peculiar circumstances, which have already engaged our attention in a former part of this work.[n]

Contracts for public services.

There is yet another method whereby it has been customary for public expenditure to be either pledged or actually incurred by government to amounts in excess of that which has been actually voted by Parliament—namely, by means of contracts, or other engagements, entered into for the construction of public works, or the performance of particular services for the public benefit. Such contracts necessarily pledged the government to prospective payments for a series of years, while the funds required could only be obtained by annual votes in Committee of Supply, or by special Acts passed from time to time, granting the necessary sums, the consent of Parliament to the continuance of the contract being assumed from their concurrence in the initial payment proposed, while their vote has been given, perhaps, in total ignorance of the terms of the contract itself.[o] The attention of Parliament was first directed to the irregularity of this practice, and to the necessity for the exercise of a more rigid control over this branch of expenditure, in the year

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[m] See *ante*, p. 695. [n] See *ante*, p. 699.
[o] See Hans. D. v. 171, pp. 462 466.

1859, in consequence of certain objectionable transactions regarding contracts for postal and telegraphic services that then transpired. A committee was appointed by the House of Commons on the subject, and their reports led to the adoption by the House of various resolutions and standing orders, to be hereafter enumerated, which were intended to assert and maintain the right of the House to control the execution of such contracts. By these rules, ample provision has been made to secure that full information shall be given to the House when any such contracts have been entered into, and that they shall invariably contain a clause declaring that the consent of the House, either expressed or implied, is necessary to give them validity. Although at present these rules merely extend to the case of certain specified contracts, it has been admitted, by the highest authority, that the executive has no constitutional right to make a contract which shall be binding on the House of Commons.[p] It may, therefore, be safely assumed that hereafter no contracts, involving any considerable amount of public expenditure beyond that which has been granted for the service of the current year, will be carried out until the sanction of Parliament has been obtained on behalf of the same.

Require the approval of the House of Commons.

In fact, in the session of 1862, the constitutional control of the House of Commons over contracts received a still more extended application, and was embodied in an Act of Parliament. In a previous session (that of 1860), the House had resolved to grant the sum of two million pounds to construct necessary works for the fortification of the British coast; and, in 1862, a Bill was brought in to provide for a large portion of this expenditure. On July 10, in committee on the Bill, a clause was proposed by Sir Stafford Northcote to declare that any contracts to

Contracts for military works.

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[p] Mr. Gladstone in Hans. D. v. 157, p. 1412; and *Ib.* v. 189, p. 702. And see *ante*, p. 488.

be entered into by government for this service which involved the expenditure of a greater sum than that which had been already voted by Parliament must be previously approved of by the House of Commons. The ministry, at first, opposed this clause. The chancellor of the exchequer remarked that 'the practical wisdom and the good or bad economy of such contracts was a matter on which the House of Commons, as a deliberative assembly, had not the opportunity of forming an opinion in the same way as the executive government; and it was not according to usage that the government should be able to relieve itself of its special responsibility with regard to these contracts by a resolution of the House of Commons. The responsibility of the government would be better preserved by giving the House the power of interfering with these contracts before they became valid than by asking the House to approve each of them by a resolution.'[q] On a division, the clause was negatived by a majority of five. On July 14, however, the ministry announced their acceptance of this provision.[r] It accordingly appears in the statute to the following effect: 'That it shall not be lawful for the secretary of state to enter into any contract involving the expenditure of any sum greater than that for which the authority of Parliament has been specifically obtained, without inserting therein a clause requiring that such contract shall not be binding until it has lain for one month on the table of the House of Commons without disapproval, or be formally approved of within that period.[s] The object of this clause is not to insist that every contract entered into by government for the construction of these works shall be first submitted for the approval of Parliament, but that no such contract shall be made for a greater sum than has been actually voted without the previous knowledge and consent of the

To be laid before Parliament.

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[q] Hans. D. v. 168, p. 199.
[r] *Ib.* pp. 290, 635.
[s] 25 & 26 Vict. c. 78, § 2. See Smith's Parl. Rememb. 1862 p. 149.

House of Commons, so that the government may not be able to bind the House in such a way as to prevent entire freedom of action whenever a further appropriation is required.[t]

Moreover, in regard to the expenditure to be incurred on behalf of these fortifications, it has been distinctly acknowledged by the government that, while they would be fully authorised to enter into contracts to amounts not exceeding the total estimated cost of the works, the general scheme of which had been sanctioned by Parliament, yet that the carrying out of any such contracts must depend upon the consent of Parliament to vote the sums required to make good the same, from time to time.[u] It was also stated that, with this additional grant, '*no new works*' as to the principle of which the House had not already pronounced would be undertaken; and furthermore that, when the schedule of the Bill was under consideration, it would be competent for any member to move 'that a particular work should not be continued.'[v] The cost of these fortifications, as originally estimated by the Palmerston administration, was a little over five million pounds. From time to time, fresh grants, to make up the appropriation for this service to the required amount, were voted by Parliament. Meanwhile the estimated cost of the works grew to upwards of seven millions.[w] But though additional sums of money were asked for to execute the works, 'the number and nature of the works to which the assent of Parliament had been given' remained unaltered.

Contracts for new works.

In 1866, however, the newly-appointed Derby government were of opinion that some extension of the works was desirable. Accordingly, towards the close of the session, they submitted a Bill to the House of Commons to sanction the commencement of a new work,

Fortifications Bill of 1866.

[t] See Hans. D. v. 168, pp. 187–203; *Ib.* v. 176, p. 1533.

[u] *Ib.* v. 172, p. 688.

[v] Hans. D. v. 176, pp. 1533, 1873.

[w] See *ante*, p. 426.

and to authorise the expenditure of 50,000*l.* on behalf of the same. The money itself was not required, inasmuch as there were sufficient funds in hand, which had been saved from former grants for fortifications. But it was necessary to obtain the sanction of Parliament to this change in the appropriation. The ex-chancellor of the exchequer, and other leading members, strongly objected to this Bill, for various reasons, but principally on the ground that the proposal should have been made 'in the estimates at the commencement of the session, or at a time when the House was able to give its best attention to the subject.' Whereupon the government agreed to withdraw the Bill, and 'to proceed next year in the ordinary and convenient form of presenting an estimate for these works, so that the House would have a fair opportunity of discussing the necessity for them.'[x] In April 1867, a Bill was brought in to empower the government to redistribute the moneys granted by the Act 28 & 29 Vict. c. 61, pursuant to a revised estimate appended thereto, and which forms the schedule of the Act, as passed (30 Vict. c. 24). This Bill was introduced upon mere motion, as it made no new appropriation for fortification purposes. In the same session, however, another Act was passed, based upon resolutions agreed to in a committee of the whole, granting an additional sum of 800,000*l.* for fortifications, the same to be expended in accordance with a detailed estimate annexed to the Act (30 & 31 Vict. c. 145). And in 1869, by the Act 32 & 33 Vict. c. 76, a final grant was made of 1,510,000*l.* to complete the works, and authority given to abandon certain works previously sanctioned by Parliament, but which had not yet been commenced.

In 1865, pursuant to the recommendations of the

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[x] Hans. D. v. 184, p. 1669–1677; v. 185, p. 289. See also case of Harbours of Refuge, *Ib.* v. 191, p. 1000; and *ante*, p. 433. In regard to undertaking of *new works* without direct sanction of Parliament, see Com. Pap. 1868–9, v. 6, p. 531.

Select Committee on the Royal Dockyards in 1864, and with a view to the more economical and expeditious completion of certain works for the extension of the dockyards at Portsmouth and Chatham, the government obtained authority from Parliament for the Admiralty to enter into contracts for a term not exceeding five years, the maximum sum to be payable on behalf of any such contract not to exceed 250,000*l.* in any one year; the same to be defrayed out of moneys to be voted by Parliament, year by year, during the continuance of the contract; a copy of every contract entered into under this Act to be laid before both Houses of Parliament within thirty days after it has been made, or within thirty days after the next meeting of Parliament, if such contract was made during the recess.[y]

Dockyard works.

On March 20, 1865, the House of Commons was informed, in answer to a question, that the new contract with the West India and Pacific Steamship Company, for carrying mails to Jamaica, &c., being terminable at six months' notice, had no clause suspending its operation until it had been one month before the House. A copy of the contract was nevertheless laid upon the table.[z]

Postal contracts.

The following narrative of the proceedings of the Committee on Packet and Telegraphic Contracts in 1859 and 1860, and of the action of the House on their reports, will throw additional light upon this subject, and will also point out the steps that have been taken by the House to impeach the validity or expediency of any contract.

It was on July 7, 1859, that, upon motion of the chancellor of the exchequer, a select committee was appointed to enquire into and report on the manner in which contracts, extending over periods of years, have, from time to time, been formed or modified by her Majesty's government with various steam-packet companies for the conveyance of the mails by sea; and likewise into any agreements, actual or prospective, which have been adopted at the public charge for the purposes of telegraphic communications beyond sea; together

Packet and Telegraphic Contracts Committee.

[y] By Act 28 & 29 Vict. c. 51. And see Hans, D. v. 177, p. 1161. *Ib.* v. 179, p. 540.

[z] *Ib.* v. 177, p. 1921.

Churchward case.

with any recommendations as to rules to be observed hereafter by the government in making contracts for services which have not yet been sanctioned by Parliament, or which extend over a series of years. Owing to the late period of the session at which they commenced their labours, it was impossible for the committee to complete their enquiry before the prorogation. They accordingly confined their attention and devoted their first report to the circumstances under which the contract between the executive government and Messrs. Churchward and Jenkings for conveying the mails between Dover and the French coast had been renewed.[a] The extension had twice taken place, the last time on April 26, 1859, when the contract (which would expire in 1863) was further extended until 1870. This was done upon the recommendation of the Board of Admiralty, and in opposition to the views of the postmaster general.

It appeared in evidence before the committee, that on the eve of the last general election, when the extension of his contract was under consideration at the Treasury, Mr. Churchward volunteered his support, as an influential elector for Dover, to Captain Carnegie, one of the lords of the Admiralty, if he should become a candidate for that borough. He did this on the expectation that his contract was to be renewed. The committee, however, fully exonerated all the officers, both of the Admiralty and of the Treasury, with whom the decision in regard to this contract rested, from being influenced by any corrupt or political motive in granting the same. They did, indeed, consider that the conduct of Mr. Murray, the private secretary to the first lord of the Admiralty, was open to grave censure; but they had not sufficient evidence to show that any member of the government was cognisant of the communications between Mr. Murray, Mr. Churchward, and Captain Carnegie.

While declaring themselves most anxious for the fulfilment of all engagements entered into in good faith between the government and private individuals, the committee, nevertheless, submitted to the House 'whether Mr. Churchward, in having resorted to corrupt expedients affecting injuriously the character of the representation of the people in Parliament, has not rendered it impossible for the House of Commons, with due regard to its honour and dignity, to vote the sums of money necessary to fulfil the agreement, to extend his contract from June 20, 1863, to April 26, 1870.'

A change of ministry having taken place since the last renewal of this contract, the incoming administration, in deference to the foregoing report, and to the general opinion of the House, tacitly

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[a] Report on Post Office and Telegraphic Contracts, Com. Pap 1855. Sess. II. v. 6, p. 1.

concurring therein, refused to recognise the amended contract, which entitled Mr. Churchward to a fixed sum per annum, but permitted him to continue to conduct his postal service under the former contract, under which he was ordinarily allowed a smaller amount, but was authorised to make extra charges for certain special services. This contract would remain in force until June 1863, and was free from objection of any kind, it not having been included in the censure of the committee.[b] Churchward

The friends of Mr. Churchward, however, were not willing that his last contract should be thus set aside without a struggle. Accordingly, on March 27, 1860, Captain L. Vernon, who had been a member of the afore-mentioned committee, moved to resolve that this House, having considered the report and evidence presented by the committee on packet contracts, is of opinion that the contract entered into on April 26, 1859, between the lords of the Admiralty and J. G. Churchward ought to be fulfilled. The chancellor of the exchequer (Mr. Gladstone) opposed this motion, declaring that the impartial finding of the committee was entitled to respect; that independently of their report it was clear from the evidence that corrupt expedients, affecting injuriously the dignity of Parliament, had been resorted to to obtain a renewal of this contract. Under these circumstances, he added, the present ministry were under no obligation to carry out the new contract, and the House were not bound to vote the money, for 'the executive has no constitutional authority to make a contract binding on the House of Commons.'[c] Whereupon the motion was negatived on division.

Mr. Churchward strenuously remonstrated against the repudiation of his last contract, and applied for leave to have the case between himself and the Admiralty argued before the Court of Queen's Bench; but the Admiralty refused their consent to this plan, declaring that they would do nothing that would admit the validity of his claims or prejudice the decision of the House of Commons. The government also informed Mr. Churchward that they would only undertake to propose and support in Parliament votes for his services up to June 1863.

As a final effort, Mr. Churchward notified the postmaster-general, in February 1863, that he had submitted his case to eminent counsel, who had advised him that his last contract was good and valid; and that, in the event of the department persisting in refusing to recognise it, he was at liberty to proceed, by petition of right, to recover compensation for damages thereby sustained. In making this communication, he expressed his desire to avoid being placed in antagonism with the government, and expressed his willingness either to leave his case to a court of law or to the decision

[b] Hans. D. v. 157, pp. 1370, 1408. *Ib.* p. 1412; v. 196, p. 1628.

Churchward case.

of arbitrators. The department took no notice of this offer, but informed Mr. Churchward that his contract would terminate on June 20, 1863, and that tenders for the future conduct of the services in question had been accepted, subject, however, to a provision that, if Parliament should still vote the moneys which would be required to pay Mr. Churchward, under the proposed extension of his contract to April 26, 1870, the new arrangements were not to take effect. In reply, Mr. Churchward reiterated his remonstrances against the conduct of the government in treating his last contract as non-existent, and repeated his assurances of his readiness and ability to perform the same with efficiency up to its final termination.[d]

In order to bring this controversy to a definite conclusion, the government took the unusual course of appending to a vote on account of the packet service, proposed in Committee of Supply on May 18, 1863, a statement that the same included provision for payments to Mr. Churchward for postal services to June 20, 1863, and a proviso that no part of the vote should be applied towards any further payment to him by virtue of his last contract with the Admiralty, in respect to the period subsequent to that date. This condition gave rise to a very animated debate, not only in committee, but also on the reception of the report by the House on May 28.[e] It was objected that it was quite unprecedented and foreign to the proper functions of the Committee of Supply to submit to it any motion other than one to agree to, reject, or reduce, a proposed grant; and that any such innovation in practice would be likely to lead to very serious consequences, affecting the constitutional relations of the House with the crown and with the Lords in the matter of supply. On the other hand, it was urged that this proceeding, if new, was not necessarily irregular; that it was one which the administration had chosen as being the most fitting method of carrying out the recorded opinion of the committee of 1859, and of the House in 1860, on Mr. Churchward's contract; that it was impossible the form of motion used on this occasion could be drawn into precedent to justify a departure, under different circumstances, from the recognised usage of Parliament in supply votes, inasmuch as the proviso in question was proposed by the government itself as a condition under which it asked for the money, and could not warrant a private member in attempting to limit or change the application of a proposed grant for a particular service 'It does not follow,' said the chancellor of the exchequer, 'because a proposal of this kind may be made by the crown, therefore a similar proposal may be made by an

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[d] Papers on Packet Service (Dover and Calais, &c.), Com. Pap. 1863, v. 30, p. 607. Rep. of Postmaster-Gen. Com. Pap. 1862, v. 27, p. 411.

[e] And see Hans. D. v. 172, p. 1020.

independent member.' Moreover, 'the proposal of the crown refers to the exclusion of a particular individual from the performance of a stipulated service. It has no bearing on the service itself. It does not limit or alter the service, and, consequently, it is no precedent for any vote which might limit or alter that service.'[f] After much debate, the ministerial proposition was agreed to upon a division. It was afterwards inserted in the Appropriation Bill, and received the full sanction of law. As a further security to government against any claims that Mr. Churchward might continue to urge, similar clauses were inserted in the Appropriation Acts of 1864 to 1870, when the contract expired, and even subsequently to 1875, inclusive (after which it was omitted from the Act), in deference to the opinion of the law officers of the crown; on account of an action, commenced by Mr. Churchward, which was pending in the Exchequer Chamber.[g] Nevertheless, Mr. Churchward commenced proceedings in the Court of Queen's Bench against the Board of Admiralty by a petition of right, claiming damages to the extent of 126,000*l.* for injuries sustained by the cancelling of his contract. The case was ably argued on behalf of the plaintiff, but the court (in November 1865) decided against him, on the ground that it would be unjust and unwarrantable that the Admiralty should be obliged to carry out a contract after Parliament had refused to make provision for the same.[h]

Churchward case.

In the session of 1867, the proceedings against Mr. Churchward became again the subject of a contest in the House of Commons, he having, since the close of the previous session, been appointed a magistrate for the borough of Dover. His appointment was brought under the notice of the House on March 15;[i] and on March 19 it was moved to resolve that an address should be presented to the Queen for his removal from the commission of the peace. This motion was justified on the ground that Mr. Churchward had been charged by a select committee of the House, in 1853, with bribery, in promising to use his influence to obtain a situation for an elector, in consideration of his vote at the election for Plymouth in 1852. And also by the select committee in 1859, of resorting 'to corrupt expedients affecting injuriously the character of the representation of the people in Parliament.' In consequence of the last named report it was alleged that the House had refused to sanction the renewal of his postal contract, and had renewed, year after year, its votes of censure against him. An amendment to the proposed address was moved by the friends of Mr. Churchward to substitute, for his

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[f] Hans. D. v. 170, p. 2036.

[g] 26 & 27 Vict. c. 99, § 15; 27 & 28 Vict. c. 73. § 17, &c.; 38 & 39 Vict. c. 78, Sched. B. 13. Hans. D. v. 207, pp. 310, 385; v. 212. p. 192; v. 216, pp. 1500, 1706; v. 218, p. 207.

[h] L. T. Rep. N.S. v. 14, p. 57; and Best & Smith Rep. p. 807.

[i] Hans. D. v. 185, p. 1914.

Churchward case.

particular name, a general address that 'all persons in the commission of the peace,' who have been found guilty, either by a select committee, or by a royal commission, of corrupt practices at parliamentary elections—or of being privy, or assenting thereto—should be removed from the magistracy. The main motion, as against Mr. Churchward, was opposed by the government on the ground that he had been unjustly treated, and that the decision of the committee of 1859 could not be accepted as conclusive against him. But they were unable to induce the House to reject or postpone the amendment, which was agreed to, on division, notwithstanding that the chancellor of the exchequer expressed a hope that the House would 'pause before assenting to a general proposition of the nature without any examination into it.'[k] On March 25, her Majesty's answer to the address was reported in these words, 'Concurring with you in the propriety of discountenancing all such corrupt practices, I will take into my serious consideration how that object may best be accomplished.'[l] The House was afterwards informed that the lord chancellor was engaged in considering all the cases that came within the scope of this address.[m]

To return to the proceedings of the Committee on Packet and Telegraphic Contracts. Having been unable to complete their enquiry in 1859, the committee was reappointed in the following session, and made three reports.

Control of Parliament over postal contracts

In their first report, the defects in the existing practice in regard to contracts for postal services entered into by the executive departments were pointed out, and the necessity for a more efficient control over the same by Parliament was strongly insisted upon. The practice, introduced by the Derby administration, of inserting words in postal contracts declaring the subsidies to be payable 'out of moneys to be voted by Parliament,' although it introduced no new principle in regard to the funds applicable to this service, distinctly recognised that all such contracts were subject to the approval of the House of Commons.[n]

Sir Stafford Northcote informed the House that he had introduced these words when he was financial secretary of the Treasury in 1859, for the first time, into the Galway postal contract, in order 'to save the members of the government personally from actions which might otherwise be brought against them, in the event of Parliament, for any reason, declining to sanction the contract.'[o] From the want, however, of early information as to the terms of existing contracts, and the fact that, until called upon, in Committee of Supply, to vote money on behalf of the same, the House was

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[k] Hans. D. v. 186, pp. 167-207.
[l] *Ib.* pp. 466, 471.
[m] *Ib.* p. 730.
[n] *Ib* v. 157, pp. 1397, 1400.
[o] *Ib.* v. 160, p. 1001; and see *Ib.* v. 163, p. 1103.

ignorant of the nature and extent of agreements entered into by the executive government, it was obviously impossible for the House to exercise its right of control with that freedom which is absolutely essential for the right performance of its high functions. In the interval between the execution of a contract and the application to Parliament for a vote in supply on account thereof, heavy expenses and liabilities are necessarily incurred by the contractors, so as to render it a matter of peculiar hardship and difficulty for the House, in the absence of any charge of fraud, misrepresentation, or corrupt proceedings, to interpose and refuse to vote the moneys required to carry out a contract which has been entered into by government within the limits of its own authority.[p] Parliamentary control is thereby practically excluded in regard to an important branch of public expenditure. While it seems repugnant to the principles of our constitution that the executive government should be free to enter into contracts binding the country for prolonged periods, and by anticipation, to the payment of vast sums, without the possibility of any effective parliamentary check beyond the disapproval after the evil had been accomplished, and when perhaps the ministers by whom the contract was made were no longer in office, nevertheless the committee were fully sensible of the difficulties attending any change of system, which might result in a parliamentary canvass on behalf of competing candidates for a public contract. They accordingly recommended that these transactions should remain altogether in the hands of the executive, who should be free to execute any contract according to their own discretion and responsibility, but that a clause should be inserted in all new contracts extending over a period of years and creating a public charge for the conveyance of mails by sea, or for the purpose of telegraphic communications beyond sea, requiring that they shall not be binding until [they have lain on the table of the House of Commons for one month, without disapproval unless sooner] approved of by a resolution of the House.[q] On July 13, 1869, this resolution was amended, by omitting the words between brackets, and, together with the two following resolutions, made standing orders of the House.[r]

Postal and telegraphic contracts.

On June 19, 1873, the chancellor of the exchequer moved a resolution that the Cape of Good Hope and Zanzibar Mail Contract[s] be approved; to which an amendment was proposed and carried for the appointment of a select committee to enquire into the circum-

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[p] See Hans. D. v. 157, p. 1364.

[q] First Report of Sel. Com^e. on Packet and Telegraphic Contracts, 1860, pp. xiii.-xv. (in Com. Pap. 1860, v. 11). For precedents of proceedings had in the approval or disapproval of contracts by the House of Commons, see *ante*, p. 492.

[r] Hans. D. v. 197, p. 1818.

[s] *Ib.* v. 214, p. 1101; v. 216, p. 686.

Parliamentary control of contracts.

stances under which the contract was made. The committee was nominated on June 26; and reported on July 23, condemning the contract and also another contract connected with it.[t] On August 1, two fresh contracts, framed in accordance with the recommendations of the committee, were laid on the table, and on August 4 were approved of by the House.

Finally, in view of the adoption of these standing orders, the control of the House of Commons over mail contracts must not be considered as a dormant power, to be evoked only in case of urgency, but as an important element in the agreement between the government and the contractors, which should be recognised by the parties concerned.[u]

On July 24, the foregoing recommendation was embodied in a resolution, which was agreed to by the House of Commons, together with two other resolutions, providing (1) for the early transmission to the House of any such contracts, accompanied by a Treasury minute, setting forth the grounds on which the same have been executed, and declaring (2) that, when any such contracts require to be confirmed by Act of Parliament, they should not be dealt with as private Bills, and that power to the government to enter into agreements by which obligations at the public charge shall be undertaken should not be given in any private Act.[v] Such minutes 'ought to be verified by some responsible minister acquainted with those grounds before presentation to the House of Commons.'[w] The accidental omission of a formal Treasury minute would prevent the House from proceeding to consider the contract, until the defect was supplied.[x] So far as Bills relating to government contracts are concerned, these resolutions would appear to have been superseded by a new standing order, adopted by the House on March 4, 1861, and which, without taking such measures out of the cate-

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[t] Hans. D. v. 217, p. 1366.

[u] See Rep. Com[e]. Zanzibar Contract, Com. Pap. 1873, v. 9, pp. 242, 365.

[v] Com. Jour. 1860, p. 413.

[w] Com. Pap. 1873, v. 9, pp. 241, 339, 369.

[x] *Ib.* p. 285; Hans. D. v. 216, p. 1001.

gory of private Bills, ensures that due attention shall be directed to them by requiring that the chairman of the Committee of Ways and Means shall make a special report to the House previously to the second reading of any private Bill by which it is intended to authorise, confirm, or alter, any contract, with any department of the government, whereby a public charge has been or may be created, and providing for the due consideration of such report by the House.[y]

Control of Parliament over contracts.

The recommendations of the Packet and Telegraphic Contract Committee of 1860, in their first report, were principally founded upon the proceedings of government in reference to the Galway contract; and as a brief narrative of this case will contribute to elucidate the subject of parliamentary control over transactions of this description, it is here subjoined.

Galway contract.

In 1858, a private company, of which Mr. Lever was the managing director, established a line of steamers for commercial purposes, to ply between the ports of Galway, in Ireland, and New York, in the United States. This scheme excited considerable interest, especially in Ireland, and several deputations waited upon the ministry, in the course of that year, urging the importance of its being encouraged by government. After much negotiation between the parties, it was at length agreed upon to allow this company a subsidy of 78,000*l.* per annum for seven years, on condition of its efficient performance of postal services between Ireland and America. The proposed contract was disapproved of by the postmaster-general for several reasons. But it was formally authorised by the Treasury for 'important considerations of commercial and social advantage, in relation chiefly to Ireland.' There appeared to be a general impression abroad, that political advantages to the party then in power had been a chief inducement in the grant of these privileges. Moreover, the contract was open to serious objection on other grounds. Accordingly, when a change of ministry occurred in the following year, one of the first acts of the new administration was to procure the appointment of the Committee on Packet and Telegraphic Contracts. As we have already seen, the committee were unable to enter into any enquiry respecting the Galway Company during that session; but upon their reappointment, in 1860,

[y] Stand. Ord. 1862, No. 78; case of the Edinburgh Improvement Bill, Hans. D. v. 230, p. 241.

Galway contract.

the subject of this contract immediately engaged their attention. Meanwhile the contract had gone into operation, but as it contained a clause expressly declaring that the subsidy was only payable 'out of moneys to be voted by Parliament,' there was still opportunity for its being set aside, if it were disapproved of by the House of Commons.

After careful investigation into the facts of the case, the committee, on May 22, reported their opinion that this contract had been unwisely entered into; that it had been given without sufficient regard to the interests of Canada, whose line of ocean steamers would have readily undertaken the new service on more favourable terms, and that it was altogether an impolitic and improvident arrangement. Nevertheless, as it was still open to the House, in its own discretion, to decline to vote the necessary funds to carry the contract into effect, the committee refrained from making any recommendation on the subject.[a]

On June 26, the committee presented a second report, stating that they had been compelled to resume their enquiries into the matter of the Galway subsidy, in consequence of the receipt of information pointing to the probability of a corrupt agreement having been made between certain parties, in order to procure the postal subsidy to the Galway line of steam-packets. They had accordingly instituted a searching enquiry into these transactions, but had been unable to convict the present contractors of any share therein. They therefore deemed it most advisable to inform the House of the whole particulars, and to leave the decision thereon entirely to the judgment of the House, without suggesting any opinion of their own.[a] No proceeding was taken by the House upon this report. But on July 16, 1861, a petition was presented from Mr. Irwin, one of the persons implicated by the committee in the fraudulent transactions therein referred to, complaining of the conduct of Mr. Lever (a member of the House) as managing director of the Galway Company. Mr. Lever not being in his seat, the petition was withdrawn, but it was again brought up on July 19, when Mr. Lever denied its allegations, and challenged enquiry. On this occasion the petition was ordered to be printed for the use of members only. On July 22, a motion was made that it be referred to a select committee, upon which Mr. Lever entered into a detailed refutation of the charges it contained against himself. The general sense of the House being against taking any further notice of the matter, the motion was then withdrawn.[b]

Meanwhile the government had determined that the Galway contract should proceed, and inasmuch as the select committee had ab-

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[a] First Report, Com^e. on Packet Contracts, Com. Pap. 1860, v. 14, pp. 56-58.

[a] Second Report, *Ib.* p. 529.

[b] Hans. D. v. 164, pp. 977, 1178, 1286.

stained from recommending the cancelling thereof, notwithstanding the adverse conclusions they had arrived at respecting it, the secretary of the Treasury, in Committee of Supply, on August 9, 1860, proposed a vote of 60,000*l.* as a first instalment upon the same. In submitting this motion, he frankly acknowledged the weight of censure resting upon the contract, from the terms of the report of the select committee, but nevertheless he expressed his 'strong feeling that arrangements of this kind could not be set aside on mere grounds of general policy or impolicy,' and declared that he did not believe the House had ever refused to vote the estimate for a contract merely on such grounds. To do so in the present instance, when more than a year had elapsed since the contract had been made, would, he contended, be unfair to the company. He further showed that the fraudulent transactions, adverted to in the second report of the committee, had taken place between parties who were no longer connected with the company, and therefore it would be wrong to visit the consequences of their misdoing upon the existing directors and shareholders, who were entirely blameless in the matter. The bargain made with the company might have been a bad one for the public, but it would be still worse for the House, under any pretence, to sanction a breach of faith, and establish a precedent of repudiating inconvenient obligations. This vote, notwithstanding considerable opposition, was finally passed, on division, by a large majority.

Galway contract.

Their contract being thus acknowledged and confirmed by Parliament, the company endeavoured to fulfil their engagements. But they did not succeed in accomplishing that which they had undertaken, and after repeatedly receiving extensions of time, and other indulgences, they were at length informed by the postmaster-general that their contract was at an end. This decision naturally excited much dissatisfaction among the friends of the company, and on June 14, 1861, a committee was moved for, in the House of Commons, to enquire into the circumstances attending the termination of the contract. The ministry did not oppose this motion (although it was characterised by leading members on the other side of the House as an undue encroachment upon the functions of the executive government), and it was agreed to without a division.[c] The committee carefully investigated the case and, on July 23, made an elaborate report thereon. In it they expressed their opinion 'that the postmaster-general was justified in declining to continue a contract which, in his judgment, at the time of its determination, the company could not carry out efficiently.' But, they added, they had reason to believe that ere long the company would be in possession of an efficient fleet of steamships, and should it be advisable to

[c] Hans. D. v. 163, pp. 1071 1159.

Galway contract.

re-establish postal communication between the west of Ireland and America, they thought the Galway Company were deserving of the favourable consideration of the government.[d] This appears to have been agreed to by the government, for, on August 6, Lord Palmerston informed the House, that whenever there was a reasonable prospect of the company being able to fulfil their engagements, they would give a favourable consideration to their claims.[e] His lordship renewed these assurances on June 24, 1862,[f] and again on February 9, 1863.[g] Whereupon, on March 20, 1863, Mr. Baxter moved a resolution, declaring that the House was not prepared to grant a sum of money to the Galway Packet Company. He grounded his motion upon the allegation that the renewal of the contract was wholly uncalled for, and could only have proceeded from corrupt political motives. Lord Palmerston repudiated this accusation, and contended that there had been sufficient public reasons to justify the government in giving the company another trial. On division, the motion was negatived by a large majority.[h] On May 4, the government formally notified the company of their willingness to renew the contract. On July 21, on motion of Mr Peel (the secretary of the Treasury), it was resolved, without debate, that the said contract be approved.[i]

Ocean telegraph.

Red Sea and India telegraph.

Having disposed of the subject of postal contracts, the committee of 1860 turned their attention to the remaining branch of enquiry, concerning telegraph lines, to which their third report is devoted. It briefly describes the various lines of Ocean telegraphs, on behalf of which the executive government had entered into pecuniary agreements. One of these was the Red Sea and India Telegraph line, which was incorporated in 1859, and afterwards attained such an unenviable notoriety. The committee explained the circumstances under which the government had undertaken to assist this company. They arose out of the political importance attributed to the project, and its uncertainty as a commercial speculation. This induced the government to guarantee 4½ per cent. on the capital of 800,000*l.* for a period of fifty years. Unfortunately, whether intentionally or otherwise does not clearly appear, this guarantee was not made conditional on success, as in similar cases, but was absolute. It was stipulated, however, that an Act of Parliament should be obtained to confirm and carry out the agreement. This Act was brought in, proceeded upon, and passed as a private Bill.[j] As originally introduced, there was nothing in the Bill to show the nature and extent of the pecuniary obligations incurred by the government. It is true

[d] Report on Royal Atlantic Steam Navigation Company, Com. Pap. 1861, v. 12, p. 13.

[e] Hans. D. v. 164, p. 1891.

[f] *Ib.* v. 167, p. 1023.

[g] *Ib.* v. 169, p. 187.

[h] *Ib.* p. 1691.

[i] *Ib.* v. 172, pp. 66, 1202; but see *Ib.* v. 173, p. 1456.

[j] 22 & 23 Vict. c. 4.

that in the House of Lords a copy of the agreement was afterwards added to the Bill, by way of schedule; but whilst under consideration in the Commons, it contained no information as to the conditions of the agreement, whereby members could judge of its propriety or sufficiency.[k] The line had scarcely gone into operation before it was evident that it was a complete failure, and all attempts to remedy the disaster proved ineffectual. In taking notice of this result, the committee abstained from commenting upon the mode of constructing the telegraphic cable, and confined themselves to an investigation of the contract itself. As to the conditions under which such contracts should be entered into, the committee would not venture to make any suggestions. But they pointed out that it was obviously not in the form of a private Bill that agreements of this kind could be effectually brought under the notice and control of Parliament; and they were of opinion that no power to guarantee dividends or interests, on the part of government, should in any case be given by a private Act.[l] As the line continued inoperative, and as doubts were entertained whether the government was strictly bound to continue their annual payments to the shareholders under such circumstances, the government, actuated by a high sense of honour, and bearing in mind that, without doubt, the public had understood that the agreement was unconditional, the possibility of entire failure, after completion, having been overlooked on all sides, introduced a Bill to declare 'that the guarantee contained in the said agreement was not intended to be and is not conditional on the line of telegraph of the company being in working order.' The law officers of the crown had given their opinion that, under the circumstances of the case, the government were wholly exonerated from continuing to pay the money; nevertheless, as a question of good faith, ministers persevered in the Bill, and it became law.[m] Until August 4, 1908, the government hold themselves liable for the sum of £36,054 per annum to meet this obligation. A moiety of the amount, however, is repaid out of the revenues of India.[n]

After the introduction of this Bill, the House proceeded to give effect to the recommendations of the committee, though not precisely in the manner they had suggested, by the adoption of the standing order already noticed,[o] which prescribed the course of procedure in respect to private Bills which are intended to authorise, confirm, or alter, any contracts with government, so as to ensure that the attention of Parliament shall be formally directed thereto.

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[k] Third Report of Contracts, Com. Pap. 1860, v. 14, pp. 665, 666. Hans. D. v. 161, p. 250.

[l] Third Report, p. vi.

[m] Hans. D. v. 161, p. 2152. 24 Vict. c. 4.

[n] Com. Pap. 1867, v. 39, p. 739; *Ib.* 1868-9, v. 6, p. 619; *Ib.* 1872, v. 8, p. 78.

[o] *Ante*, p. 779.

The foregoing cases afford ample illustration of the effectual control which is constitutionally exercised by the House of Commons over the grant of public money. But these examples have been confined to particular items of proposed expenditure. There still remains an undisputed right, on the part of the House of Commons, to withhold altogether the supplies asked for on the part of the crown. Before the introduction of parliamentary government, this formidable instrument of attack was often made use of to wrest from an arbitrary monarch the redress of grievances. But now there is no longer any need to resort to such an extreme measure, and this once dreaded weapon 'lies rusty in the armoury of constitutional warfare.'

Right of the House to refuse the supplies.

In 1781, Mr. Thomas Pitt proposed to delay the granting of the supplies for a few days, in order to extort from Lord North a pledge regarding the war in America. It was then admitted that no such proposal had been made since the Revolution; and the House resolved to proceed with the Committee of Supply by a large majority.[p] In the same session, Lord Rockingham moved, in the House of Lords, to postpone the third reading of a Land Tax Bill, until explanations had been given regarding the causes of Admiral Kempenfeldt's retreat, but did not press it to a division.[q]

On February 22, 1864, Mr. Bernal Osborne moved to postpone the consideration of the navy estimates for three weeks, until the papers relating to the Schleswig-Holstein question had been laid on the table, the production of which he was of opinion had been unwarrantably delayed. But the leaders of the Opposition were not prepared to justify this extreme proceeding, though agreeing that these papers ought to have been sooner produced, and the motion was negatived on division.

Solitary instance.

'The precedent of 1784[r] is the solitary instance in which the Commons have exercised their power of delaying the supplies. They were provoked to use it by the unconstitutional exercise of the influence of the crown; but it failed them at their utmost need, and the experiment has not been repeated. Their responsibility, indeed, has become too great for so perilous a

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[p] Parl. Hist. v. 22, p. 751. [q] *Ib.* p. 865. [r] See *post*, p. 823.

proceeding. The establishments and public credit of the country are dependent on their votes, and are not to be lightly thrown into disorder. Nor are they driven to this expedient for coercing the executive, as they have other means, not less effectual, for directing the policy of the state.'[s]

Resolutions of Committee of Supply.

The resolutions of the Committee of Supply are reported to the House on a future day, they are then agreed to, disagreed to, or re-committed, as the case may require. If, on consideration of the report, it be thought necessary to increase the sum granted by the Committee of Supply, the resolutions proposed to be increased must be re-committed. The House may indeed *lessen* the sum proposed to be granted without re-committal, but to increase the amount would be to impose a charge not previously sanctioned by the committee.

Votes in Committees of Ways and Means.

'But these resolutions, although they record the sanction of the House of Commons to the expenditure submitted to them, and authorise a grant to the crown for the objects specified therein, do not enable the government to draw from the Consolidated Fund the money so appropriated. A further authority is required, in the shape of a resolution in Committee of Ways and Means, which must be embodied in a Bill, and be passed through both Houses of Parliament, before practical effect can be given to the votes in supply, by authorising the Treasury to take out of the Consolidated Fund, or, if that fund be insufficient, to raise by exchequer bills[t] on the security of the fund, the money required to defray the expenditure sanctioned by such votes. The votes in Committee of Supply authorise the expenditure; the votes in Committee of Ways and Means provide the funds to meet that expenditure.

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[s] May, Const. Hist. v. 1, pp. 470-472. And see Hearn, Govt. of Eng. pp. 357-360.

[t] For the origin, history, and practice, in regard to exchequer bills, see Hans. D. v. 161, p. 1309; v. 165, p. 131; v. 180, p. 285; Report on Public Moneys, Com. Pap. 1857, 2nd Sess. v. 9, pp. 532-538. See also *post*, v. 2.

'The manner in which this provision is made is as follows: As soon after the commencement of the session as possible, when votes on account of the great services have been reported, a resolution is proposed in Committee of Ways and Means for a general grant out of the Consolidated Fund towards making good the supply granted to her Majesty.

'It is the salutary, judicious, and almost invariable rule of the House not to enter upon questions of Ways and Means until the House has passed its judgment upon those items of the expenditure of the year which are at once the greatest and most variable—viz. the naval and military estimates;' and the chancellor of the exchequer ordinarily refrains from making his financial statement until these estimates have been passed.[u]

Ways and Means Acts.

'This grant never exceeds the amount of the votes actually passed in Committee of Supply; upon this resolution a Bill is founded, which passes through its various stages, and finally receives the royal assent, at a very early period of the session; and then, but not before, the Treasury are empowered to direct an issue of the Consolidated Fund to meet the payments authorised by the vote in supply of the House of Commons.[v]

It is one of the especial duties of the Speaker of the House of Commons to see that no Ways and Means Bill covers a larger amount than has been already voted in Committee of Supply, and agreed to by the House. After the votes in supply have been agreed to, the Speaker officially transmits a copy of them to the comptroller of the exchequer, to acquaint him for what purposes, and in what amounts, the Commons have sanctioned the outlay of public money.[w]

'The constitutional effect of this proceeding is that,

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[u] Hans. D. v. 154, p. 866. Concerning exceptions to this practice, see *post*, p. 788. For instances of unusual delay in passing estimates, see Hans. D. v. 207, pp. 1888, 1897.

[v] May, Parl. Prac. ed. 1883, p. 683; Hans. D. v. 136, pp. 1310, 1395. Second Rep. Com^e. of Pub. Accounts, Com. Pap. 1863, v. 7, p. 479. See Exchequer Act, 4 Will. IV. c. 15, § 11. And for examples of Sessional Ways and Means Acts, see 13 Vict. c. 3, § 7; 21 Vict. c. 6, &c.

[w] Com. Pap. 1857, 2nd Sess. v. 9, p. 521.

until the Queen and the House of Lords have assented to the grant of ways and means, the appropriation of the public money directed by the vote in supply of the House of Commons is inoperative. These general grants of ways and means, upon account, provided by successive Acts of Parliament during the session, in anticipation of the specific appropriations embodied in the Appropriation Act passed at the close of the session, may be viewed as the form in which Parliament considers it most convenient to convey their sanction to the ad interim issue of public money upon the appropriation directed by the Commons alone, relying upon their final confirmation being obtained at the close of the session.[x] The final grant of ways and means to cover the whole of the supplies voted in the session is always reserved for the Appropriation Act; thus, although the House of Commons at an early period of the session might have voted the whole of the supplies of the year, they could still hold their constitutional check upon the minister by limiting the grant of ways and means to an amount sufficient only to last such time as they might think proper to give him the means of carrying on the public service, and they are by such limited grants at all times enabled to prevent the minister from dissolving or proroguing Parliament.'[y]

Ad interim advances of money.

When the first report of the Committee of Supply has been received by the House, and agreed to, a day is appointed for the House to resolve itself into a committee 'to consider of ways and means for raising the supply granted.'

Committee of Ways and Means.

It is in the Committee of Ways and Means that the budget, or financial statement of the chancellor of the exchequer, is usually made. In 1833, Mr. Hume moved

The Budget.

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[x] See *post*, p. 823.

[y] Report on Public Moneys, Com. Pap. 1857, Sess. 2, v. 9. Memo. on Financial Control, pp. 26, 27. See the Chanc. of Excheq. observations in Hans. D. v. 136, pp. 1310-1326, 1395.

The Budget.

an amendment to the motion for the Speaker to leave the chair to go into Committee of Supply, the object of which was to compel the chancellor of the exchequer to open the budget before the army and navy estimates were voted, but the amendment was negatived without a division.[z] But several instances are cited by May wherein the budget was brought forward in Committee of Supply, or of Ways and Means, before the usual votes for the service of the year had been taken.[a]

The introduction of the budget has been thus described:—'Before, or soon after the close of each financial year [b] [which ends on March 31], the chancellor of the exchequer submits to the House of Commons a general statement of the results of the financial measures of the preceding session, and gives a general view of the expected income and expenditure of the ensuing year; he intimates at the same time whether the government intends to propose the repeal of any taxes, or the raising of money by the imposition of taxes, or by loan, or otherwise.

Some years ago it was customary to estimate the revenue of the coming year on an average of preceding years: after a time, to base it on the receipts of the previous year; but, in order to allow for increase of population and consumption, it has gradually become the practice to estimate the revenue at a higher amount than the actual yield of the past year.[c]

This exposition of the state of the finances for the past and ensuing year gives the House of Commons all the necessary information to enable them to exercise an important check upon the minister, by limiting his means of raising money to the sums actually required for the public expenditure. If his statement shows a

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[z] Mir. of Parl. 1833, p. 964.

[a] May, Parl. Prac. ed. 1883, p. 667.

[b] Changes have been made from time to time, in the termination of the financial year. See Com. Pap. 1868-9, v. 35, p. 813.

[c] Chanc. of Exchcq. (Sir S. Northcote), Hans. D. v. 218, p. 644 (Mr. Gladstone), *Ib.* p. 993.

larger surplus revenue than the House of Commons considers it prudent to leave as a margin to the government, pressure is immediately brought to bear upon it to procure a reduction of taxation;[d] if, on the other hand, the minister shows that the revenue will be insufficient to meet the expenditure, it rests exclusively with the House of Commons to grant or to refuse the demands which may be submitted to them for meeting that deficiency. The intention of this budget statement is not only to lay before the House of Commons the scheme of taxation for the ensuing year, but to satisfy them that the public income to be raised in the year will be sufficient, and no more than sufficient, to meet the expenditure which the government proposes to incur within the year.'[e]

In 1876, the chancellor of the exchequer included for the first time in his budget a statement of the operations of the Public Works Loan Commissioners, under the amending Act of 38 & 39 Vict. c. 89; for the purpose of bringing all loan transactions under the notice and control of Parliament; and of obtaining authority to raise funds to provide for local loans during the ensuing year.[f]

Questions upon the Budget.

After the chancellor of the exchequer has concluded his financial statement, it is customary for members to rise and put questions to the finance minister with respect to any point which may require further explanation. This is a convenient practice, and is much to be preferred to that of raising, at once, a general debate upon the budget, as it enables the whole ministerial scheme to be laid before the country in a complete and intelligible shape.[g]

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[d] Remarkable instances of yield of revenue in excess of estimate, Hans. D. v. 210, p. 615; v. 218, p. 640.

[e] Rep. on Public Moneys, Com. Pap. 1857, Sess. 2, v. 9; Memo. on Financial Control, by Sir G. C. Lewis (Chanc. of Exchequ.), *Ib.* p. 519. For the derivation of the word 'Budget,' see Statistical Jour. v. 29, p. 325.

[f] Hans. D. v. 228, p. 1111.

[g] Gladstone (Chanc. of Exchequ.) Hans. D. v. 183, pp. 165, 411.

Measures considered in the Budget.

As a general rule, all propositions directly dealing with the revenue derivable from customs, excise, or assessed taxes, whether by way of increase or diminution, ought to be treated in connection with the financial measures of the year, and should form part of the budget of the chancellor of the exchequer; so as to admit of the House exercising its constitutional control over all such measures at one and the same time, viewing them as parts of one comprehensive plan.[h] But cases will sometimes arise wherein a departure from this rule is expedient: as, for instance, when there are reasons that make it desirable that a proposed duty should take effect from an earlier period of the year than that at which the financial statement is made;[i] or, where the object to be attained has no special reference to the revenue, but is for the regulation of trade.[j]

It is a recognised parliamentary rule, that no important measure can be advantageously considered by the House immediately after the statement of its principles by the minister of the crown. Thus the chancellor of the exchequer submits the financial statement, but never asks the assent of the House thereto until a future day; or if, for financial reasons, the affirmation is asked of any particular proposition, it is always considered a mere formal affirmation, and the merits of the question remain open to further consideration.[k] But the budget submitted on April 4, 1867, was an exception to the general rule. Being simple, concise, and generally acceptable, the resolutions of ways and means were moved, debated, agreed upon, and ordered to be reported to the House at the same sitting.[l]

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[h] Hans. D. v. 185, p. 499.

[i] Duty on Dogs Bill, *Ib.* v. 185, p. 474.

[j] Sugar Duties. *Ib.* pp. 348, 355. May, Parl. Prac. ed. 1883, p. 693.

[k] Mr. Gladstone, Hans. D. v. 185, p. 489. *Ib.* v. 186, p. 1130. *Ib.* v. 195, p. 433; v. 205, p. 1531.

[l] *Ib.* v. 186, pp. 1110–1159.

Taxes voted in Committee of Ways and Means, or otherwise.

All taxes are not necessarily proposed in the Committee of Ways and Means. Though the distinction is not always observed, it is the usual practice to confine the deliberations of this committee to such taxes as are more distinctly applicable to the immediate exigencies of the public income; and to consider, in other committees of the whole House, all fiscal regulations, and alterations of permanent duties, not having directly for their object the increase of revenue.[m] Accordingly, it is irregular to move, in Committee of Ways and Means, a general motion concerning taxation—as, 'that it is expedient to equalise the duties levied on the descent of real and personal property;' or, an amendment deprecating an addition to the funded debt—though it is quite competent for a private member to propose a scheme of taxation, to raise the supplies required for the service of the year, by way of amendment to the government proposition.[n]

It is the invariable course, in Committee of Ways and Means, to submit to the House resolutions which alter or impose taxation before those which are intended simply to repeal taxation.[o] Upon the moving of the first resolution, though it may refer to but one specific proposal, members may discuss the whole financial statement.[p]

Annual and permanent taxation

Duties are either annually voted, upon the recommendation of the chancellor of the exchequer, in his budget, or they are imposed for a term of years, or made permanent, by special Acts of Parliament.[q] Occasionally certain duties heretofore voted annually are made permanent;[r] but while it is in the discretion of

[m] May, Parl. Prac. ed. 1883, p. 693.

[n] Mir. of Parl. 1840, p. 3042; and *Ib.* 1841, Sess. 2, p. 468. As to the right of members to propose schemes of taxation by way of substitute to the government plan, see *ante*, p. 711.

[o] Hans. D. v. 162, p. 1330.

[p] Mr. Gladstone, Hans. D. v. 224, p. 290.

[q] Northcote, Financial Policy: *passim.*

[r] Hans. D v. 162, p. 1981; v. 174, pp. 1986, 2021. Smith's Parl. Rem. 1864, p. 77. Hearn, Govt. of Eng. p. 357.

government to propose to Parliament a greater or less amount of permanent taxation, from time to time, it is not desirable 'to vary the constitutional practice of always maintaining some large amount of taxation to be annually voted by the House.'[s] It is right that the great bulk of the revenue arising from taxation should be levied under permanent Acts, in order to maintain the public credit on a firm footing, and for the security of the commercial interests of the country, which would suffer if existing imposts were liable to frequent change.[t]

Time to be allowed to consider all financial questions.

It is an important privilege of the House of Commons that sufficient time should be allowed for deliberation upon any proposition submitted by government relative to taxation or public expenditure.[u] No resolutions of the Committee of Ways and Means should be reported to the House on the same day on which they were agreed upon in committee; except upon 'urgent occasion.'[v] When reported, they may be agreed to, negatived, or re-committed.[w] It is customary to report such resolutions, and move the concurrence of the House thereto, upon the day following that upon which they have been agreed to in committee, in order to avoid loss to the revenue by further delay.[x] Bills are then ordered to be brought in to give effect to the same, and every exertion is made by the government to pass such bills with as little delay as possible; consistently with a due regard to the rules of Parliament regulating the procedure in matters of taxation.[y]

Pending the ultimate decision of Parliament upon

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[s] Hans. D. v. 90, p. 1343.

[t] *Ib.* v. 128, p. 951. Lord Derby, *Ib.* v. 163, p. 724. Sir S. Northcote, *Ib.* v. 166, p. 1361. But see Mr. Disraeli's observations on this point, *Ib.* v. 159, p. 1489.

[u] *Ib.* v. 137, pp. 1639, 1648.

[v] *Ib.* v. 158, pp. 1161, 1208. Smith, Parl. Rememb. 1860, p. 123.

[w] 3 Hats. Prec. 180.

[x] Hans. D. v. 133, p. 46.

[y] See case of Income Tax and Inhabited House Duties Bill, withdrawn for certain irregularities of procedure. Hans. D. v. 206, p. 631.

New rates of duty immediately enforced.

any Bill, for the imposition or alteration of taxes, it is customary for the executive government, upon their own responsibility, to give immediate effect to resolutions altering existing rates of duty, or imposing new duties, as soon as they have been reported from committee, and agreed to by the House;[z] unless, of course, the resolutions had been agreed to *pro forma*, and with a view that substantially the judgment of the House should only be taken at a future stage.[a] But this does not prevent the substance of such resolutions from being again discussed, at future parliamentary stages, with a view to their amendment or rejection.[b] But no new tax imposed, or temporary tax continued, for the service of the year, can be increased, except in Committee of Ways and Means. A proposal to diminish a permanent tax, however, or a tax already existing, whether originally submitted in Committee of Ways and Means or in another preliminary committee, may be modified in the committee on the Bill, provided only the existing tax is not increased.[c]

Meanwhile, the new taxes are authorised to be collected by government, from the day named in the resotion, or from the date of passing the same, because it is not doubted that the Bill which imposes them, as from the date of the resolution whereon it is founded, will become law, by the concurrence of the two other branches of the legislature. If such concurrence be withheld, the resolution becomes inoperative, and the duties levied by anticipation must be repaid to the parties from whom they had been collected.[d]

When there is any material reduction of an excise duty, it is customary to allow a drawback to the manu-

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[z] Hans. D. v. 170, p. 636.

[a] *Ib.* v. 195, pp. 479, 631.

[b] Hans. D. v. 117, p. 1416; *Ib.* v. 158, p. 930, &c.

[c] May, Parl. Pract. 1883, pp. 564, 683–687.

[d] See the Att.-Gen. observations, Hans. D. v. 99, p. 1316. Also *Ib.* v. 156, p. 1274; v. 160, p. 1827.

facturers and wholesale dealers in respect of their stocks; but upon the reduction of a duty of Customs, no such drawback is allowed.[e]

New rates of duty: how levied.

It is the invariable practice, when the duty on any particular article is raised, to levy the new rate of duty on stocks in bond, and cargoes afloat, when they are entered for consumption. This sometimes operates prejudicially to the interests of merchants who have imported largely of the article in question, with the expectation that the duty will remain unchanged. But the hardship is unavoidable, as it would not be consistent with usage, or with the policy of government, to announce beforehand their intentions in such a matter.[f]

The United States Tariff Act of 1861, which was passed on March 2, and imposed new duties from April 1 of that year, contained a clause (§ 33), exempting 'merchandise in deposit in warehouse or public store on April 1,' and merchandise 'actually on shipboard, and bound to the United States, within fifteen days after the passing of the Act,' from the additional duties.[g]

Duties on spirits.

Whenever the duty on spirits is increased by resolution of the House, it is customary to charge the increased rate of duty upon all spirits in the hands of distillers, whether they hold it in bond or duty paid; but not to charge the additional rate on spirits which have passed into the hands of wholesale dealers, even though they may have taken large and unusual quantities out of bond in anticipation of the increased duty. In 1855 the government desired to subject the article in the hands of dealers to the increased rate of duty; but precedents were against it, and they abandoned the attempt.[h]

On the other hand, if the duty on any foreign com-

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[e] Hans. D. v. 201, pp. 1770, 1786, 1797.

[f] Chanc. of the Exchequ. Hans. D. v. 99, p. 1315.

[g] See also similar (though not identical) provisions in the United States Statutes for August 1861, c. 45, § 5. By the U. S. Tariff Act of 1862, c. 163, § 21, goods in bonded warehouses, &c. were exempted from additional duty, but not goods on shipboard. So also the Tariff Act of 1864, c. 171, § 19.

[h] Hans. D. v. 137, p. 1789; *Ib.* v. 140, p. 1853.

modity be reduced, it is customary for the reduction of duty to come into operation the day after the adoption of the resolution by the House; and it is entirely contrary to the usage of Parliament to allow any drawback upon stocks of the article in the hands of dealers, wholesale or retail; or to allow time for the disposal of their stock before the new duty should be enforced.[i] But a distinction has been drawn between manufacturers and dealers; and in 1870, upon the reduction of the sugar duties, ministers agreed to allow a drawback of duty on sugar remaining in any bonded warehouse, or under process of manufacture on the premises of refiners, and on stocks of manufactured sugar 'in quantity not less than 100 cwt., and in packages unbroken in the hands of refiners,' when the reduction of duty took place.[j]

Duties on foreign commodities.

On May 4, 1865, the case of the retail tea dealers,—who are obliged to keep large stocks on hand of duty-paid tea, and who would be great sufferers by the sudden reduction of duty thereon, and the consequent influx of fresh stocks of tea at the reduced rate of duty,—was brought before the House. The chancellor of the exchequer declared that, 'as a general principle, the time at which a reduction of duty shall come into operation is regulated by large considerations of public policy, and not by the convenience of retail dealers;' and that he knew of 'no case, during the last twenty years, in which, in regard to any article not about to undergo a process of manufacture, but simply to be distributed to the customers, time had been given to get rid of the stocks of the retailers.' Nevertheless, as in the present instance there had been an expectation to the contrary, specially founded upon a declaration of the government in 1863 in respect to the tea duty, he would consent to postpone the reduction from May 6 to June 1, with an entry on the Journals that the delay had been granted 'on special grounds.' The resolution was amended accordingly.[k]

Case of the tea dealers.

The financial operations of government are not confined to propositions concerning supply and taxation, but necessitate various proceedings in the money market

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[i] Hans. D. (Chanc. of the Exchequ.) v. 178, p. 1241; v. 195, p. 585; v. 200, pp. 1680, 1720; v. 201, p. 1787.

[j] *Ib.* v. 201, pp. 1409, 1789.

[k] *Ib.* v. 178, pp. 1471-1500.

for raising the supplies voted by Parliament, as well as for the regulation and management of the public debt. But the spirit of the constitution requires that all important operations which a finance minister may undertake for the public service should come under the review of Parliament before they are carried into effect. Until the year 1861 the government had the power, through the medium of the commissioners for the Reduction of the National Debt, of funding and re-funding exchequer bills of every description (including supply exchequer bills, deficiency bills, and ways and means bills), without the cognisance of Parliament; thus converting an instrument which had been issued, under the sanction of Parliament, for a temporary purpose, in anticipation of the produce of the ordinary public revenue for the year, into a part of the funded debt of the country. In 1861, however, a measure was passed, at the instigation of the government, and in conformity with the recommendations of the Public Moneys Committee of 1857, to do away with this objectionable practice by amending the law in regard to exchequer bills.[l] This Act, together with an amending statute, passed in the following year,[m] has deprived the government of the power of making any addition to the funded debt without the authority of Parliament; and it virtually requires the chancellor of the exchequer to submit to the judgment of Parliament all his financial transactions which may effect any change in the condition of the funded or unfunded public debt.[n]

All financial operations to be laid before Parliament.

The government have no right to fetter the judgment of the House of Commons in any matter involving a pecuniary liability upon the Exchequer.[o] But whenever a loan, or financial contract, which has been

Loans and financial contracts.

[l] 24 Vict. c. 5. And see Mr. Gladstone's speech on introducing the Bill, in Hans. D. v. 161, p. 1309.

[m] 25 Vict. c. 3. And see Hans. D. v. 165, p. 131.

[n] Mr. Gladstone, in Hans. D. v. 170, p. 104; *Ib.* v. 186, p. 751.

[o] *Ib.* v. 186, p. 751.

entered into by government upon its own responsibility, is submitted for the approval of Parliament, the sense of the House in regard to the same should be expressed with as little delay as possible.[p]

Stocks.

It is the practice to give immediate effect to resolutions of the House of Commons with regard to the commutation and redemption of public stocks; and the Speaker notifies parties concerned as soon as the resolutions have been agreed to.[q]

Budgets rejected or amended by the House

In the exercise of their constitutional functions, the House of Commons not infrequently dissent from the financial propositions of ministers. Thus, in 1711, a duty on leather was proposed, and rejected on a division by a majority of the House. But ministers did not give up their point. They also brought forward a motion for the same amount of duty upon 'skins and tanned hides'—that is, leather under another name—which was agreed to by the House.[r] In 1767, on a proposal to continue the land tax of four shillings in the pound for one year, an amendment, to reduce the tax to three shillings, was carried. This was the first occasion, since the Revolution, on which a minister had been defeated on any financial measure.[s] Throughout the French war the Commons, with singular unanimity, agreed to every grant of money, and to nearly every new tax and loan, proposed by successive administrations.[t] But in 1796, Mr. Pitt proposed a succession duty upon real property, which being agreed to only by the casting vote of the Speaker, he was reluctantly obliged to abandon.[u] Again, in 1805, Mr. Pitt's budget was amended by the rejecting of the duty upon husbandry horses, against which the landed gentry combined.[v] But in 1816, after the close of the war with France, when the government were

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[p] Hans. D. v. 132, p. 1490.
[q] *Ib.* v. 126, p. 321.
[r] Parl. Hist. v. 6, p. 999.
[s] *Ib.* v. 16, p. 362.
[t] May, Const. Hist. v. 1, p. 471.
[u] Stanhope's Pitt, v. 2, p. 369.
[v] *Ib.* v. 4, p. 267.

desirous of continuing the property tax for a longer term, in order to get rid of a portion of the burdens occasioned by that protracted struggle, the feeling of the House was so strongly opposed to the continuance of war taxes after peace had been obtained, that the chancellor of the exchequer was defeated, on the 18th March, in Committee of Ways and Means, upon his motion for the renewal of the property tax. After this, he voluntarily abandoned the war duties upon malt, amounting to about 2,700,000*l.* Altogether it has been computed that the government lost, on this occasion, about twelve millions of anticipated revenue.[w]

Do not necessitate a change of ministry.

It is somewhat remarkable that the great ministerial defeat, recorded in the preceding paragraph, was so quietly accepted by the government, and did not lead to a ministerial crisis. But the true doctrine on this point is that which was expressed by Lord John Russell, in 1851, after the government had sustained a defeat on some financial proposition. He remarked that 'questions of taxation and burdens are questions upon which the House of Commons, representing the country, have peculiar claims to have their opinions listened to, and upon which the executive government may very fairly, without any loss of its dignity,—provided they maintain a sufficient revenue for the credit of the country and for its establishments,—reconsider any particular measures of finance they have proposed.'[x] To the same effect, Mr. T. Baring, the under secretary for war in Lord Palmerston's administration, said, in 1861, after the rejection by the House of Lords of the Bill for the repeal of the Paper Duties,—which formed part of the financial measures of government for that year,—'I am happy that we live at a time when experience has shown

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[w] Hans. D. (1816), v. 33, p. 451. Knight, Hist. of England, v. 8, p. 53. Yonge, Life of Ld. Liverpool, v. 2, pp. 270, &c.

[x] Hans. D. v. 116, p. 634. Sir R. Peel had expressed a similar opinion, in 1841. See *ante*, p. 207.

that a budget may be modified or rejected without any change in the position of the ministry. I am glad that we have seen budgets withdrawn, and fresh ones introduced. We have seen taxes remitted, or taxes, the remission of which, when proposed, has been refused, without any effect upon the cabinet. In fact, a change of the budget does not involve a change of ministry, and I rejoice that it is so, because I think it would be most unpardonable obstinacy on the part of public men to adhere to the terms of a budget which was opposed to the wishes and feelings of Parliament. It would be unfortunate for the free exercise of the judgment of this House, if the rejection of any portion of a budget were to be construed into a vote of want of confidence.'[y]

Precedents of budgets amended or rejected by the House of Commons.

In proof of the extent to which the financial measures of government have been subjected, from time to time, to modification at the hands of Parliament—and to point out under what circumstances the rejection of their financial policy has been regarded by an administration as a token of their having forfeited the confidence of the House of Commons—the following particulars are given of the various budgets which have been amended or rejected by the House, from the epoch of the Reform of Parliament in 1832.

Precedents.

The first budget submitted to a reformed House of Commons was opened by the chancellor of the exchequer on April 19, 1833. Its details gave rise to no discussion at the time; but shortly afterwards several motions, on behalf of the agricultural interests, were introduced and debated. One of them was, at the first, successful. This was a motion proposed on April 26, by Sir W. Ingilby, to reduce the malt tax from 20*s.* 8*d.* to 10*s.* per quarter. Notwithstanding the opposition of ministers, the motion was carried by a majority of ten.[z] On the next sitting day the chancellor of the exchequer informed the House that this vote had considerably embarrassed the government, the more so as its success might probably lead the House to agree to another motion, about to be submitted, for the repeal of the assessed taxes; and that it would

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[y] Hans. D. v. 162, p. 901. And see 205, p. 1658; v 215, p. 1351. Mr. Disraeli's observations, *Ib.* v.

[z] Mir. of Parl. 1833, p. 1486.

Precedents.

occasion a loss of revenue amounting to 2,500,000*l.* Accordingly, the government determined to afford the House an opportunity of reconsidering their vote, by moving (in amendment to the motion to repeal the house and window taxes), on April 30, to resolve 'That a great deficiency of revenue would be occasioned by the reduction of the malt tax to 10*s.* per quarter, and by the repeal of the taxes on houses and windows, which could only be supplied by the substitution of a general tax upon property; and that, as the effect of that course would be to change the whole financial system of the country, it would at present be inexpedient to adopt it.'[a] At the time appointed this motion was proposed and agreed to; an amendment to omit therefrom so much as related to the malt tax being negatived by 285 to 131. Whereupon Sir W. Ingilby moved that the previous resolution be read, and that leave be given to bring in a bill pursuant to the same. But on a division of 76 to 238, leave was refused.[b] On May 21 a motion for the repeal of the taxes upon houses and windows was negatived by a large majority.

1833.

1841.

None of the budgets presented to the House of Commons from 1833 to 1841 underwent any material alteration at the hands of the House of Commons. But on April 30, 1841, Mr. F. T. Baring, chancellor of the exchequer in Lord Melbourne's administration, submitted his budget to the House. One of its most prominent features was a proposal to reduce the duty on foreign (or slave-grown) sugar from 63*s.* to 36*s.* per cwt. The government at the same time announced their intention to propose an alteration in the corn laws by a reduction of the amount of protection then afforded to the agriculturists of Great Britain. On May 7, Viscount Sandon, on going into Committee of Ways and Means, moved to resolve that the House was not prepared to consent to the proposed reduction of the duty on slave-grown sugar, in view of the immense sacrifices heretofore made for the abolition of slavery and the slave-trade, and in prospect of a supply of free-labour sugar from the British colonies. After a protracted debate from May 7 to May 18, Lord Sandon's resolution was carried. The government, instead of regarding this defeat as decisive of their fate, gave notice of their intention to move for the adoption of the usual annual sugar duties. Sir Robert Peel, not wishing to offer any factious opposition to the government, or to stop the supplies, supported this motion; but, in order to elicit the opinions of the House in regard to the ministry upon a direct issue, he proposed a vote of want of confidence, which, being agreed to on June 4, led to the dissolution of Parliament. A majority

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[a] Mir. of Parl. 1833, p. 1502.

[b] *Ib.* p. 1548. See the observations of Mr. Disraeli on this proceeding, when it was cited as a precedent on a similar occasion. Hans. D. v. 75, p. 1028.

adverse to the ministry were returned to the new House of Commons; they were again defeated upon an amendment to the address, when they retired from office, and were replaced by the administration of Sir Robert Peel as first lord of the Treasury, the Right Hon. Henry Goulburn being chancellor of the exchequer. Precedents.

Sir R. Peel continued in office for five years, but he was so uniformly successful in his financial policy that the progress of his financial measures through Parliament seldom gave rise to any formidable opposition. But an exception must be made to the budget of 1844, which excited great hostility, and was nearly the occasion of the overthrow of the government.

The annual financial statement for the year 1844 was made by Mr. Goulburn on April 29. He adverted therein to the question of the sugar duties; but it was not until June 3 that the proposed alteration in these duties was formally submitted to the House. On the eve of the expiration of a treaty with the slave-holding state of Brazil, which, while it lasted, bound Great Britain to admit Brazilian sugar on as favourable terms as that of the free countries of Java or Manilla, the government proposed a 24*s.* duty on British, and a 34*s.* duty on foreign free-grown sugar. These rates did not satisfy the West India interest, who (after an amendment had been proposed, and negatived, for the admission of slave-grown sugar on the same footing with free) contended for a proportionate reduction of duty on sugars from the British colonies, so as to leave the present relative rates unchanged. Accordingly, on June 14, in committee on the Sugar Duties Bill, an amendment was proposed by Mr. Miles, to reduce the relative rates above mentioned from 24*s.* and 34*s.* respectively, to 20*s.* and 30*s.*; and further to impose a discriminating duty in regard to certain descriptions of foreign free-grown sugar of 14*s.* This amendment was carried against the government by a majority of 20. The vote was taken on the question, 'That the words proposed to be left out [*i.e.* the government scheme] stand part of the clause,' which was negatived. The committee then reported progress. On the next sitting-day the committee again sat, and Sir R. Peel announced the intentions of government. He stated that ministers felt it necessary, on grounds of commercial and financial policy, to adhere to their original proposition, and that he must ask the committee to reconsider their vote. He therefore moved,—as an amendment to the motion that the words proposed by Mr. Miles, in lieu of those struck out of the clause by the vote of June 14, be inserted,—that the rates of duty originally proposed by government be substituted. In the course of the debate which ensued, Sir R. Peel having intimated that, if defeated upon this occasion, ministers would consider that they had lost the confidence of the House, the government amend- 1844

Precedents.

ment was agreed to.[c] Objections were taken to this proceeding on the point of form, but they were overruled.[d]

1848.

On February 18, 1848, Lord John Russell being the first lord of the Treasury, and Sir Charles Wood chancellor of the exchequer, the budget was brought forward by Lord John Russell. His scheme was received with great disfavour by the House of Commons, and by the public at large, especially the proposed renewal and increase of the income tax. Though an adverse motion on this subject, by Mr. Hume, was negatived, the feeling in the House against the increase of this tax was too strong to be disregarded. Accordingly, on February 28, the chancellor of the exchequer made a new financial statement, in which he announced that the government, in deference to the wishes of the House and the country, would not press for an increase of the income tax. Later in the session, on June 30, Sir Charles Wood made another statement, consequent upon the great loss of anticipated revenue by the withdrawal of the proposed additional income tax, without the adoption of other measures for making up the deficiency. Finally, on August 25, he produced what was called his 'fourth budget,' in which he reviewed at length the financial prospects of the year.[e]

1850.

The budget of 1850 was brought forward by Sir Charles Wood on March 14. It included a proposal for the revision of the stamp duties, which, although intended to reduce this tax as a whole, would have the effect of increasing it in certain cases. In consequence of the opposition which this part of his financial scheme encountered, the chancellor of the exchequer was induced to agree to a material reduction of his proposed rates; but this concession failed to satisfy his opponents, who carried an amendment for a further reduction of the duty. After this defeat, the government took no more steps in the matter for about a month, when Sir Charles Wood stated that they were prepared to proceed with the Bill, with a small advance on the proposed rate, as amended. This arrangement was accepted by the House.[f] Besides their defeat on this question, the government were defeated in respect to two other questions of taxation, by the introduction of Bills for the repeal of the duty on attorneys' and proctors' certificates, and in relation to the duty on bonded spirits in Ireland. The first-mentioned Bill was carried through to a third reading, notwithstanding the opposition of the government, but was finally thrown out at this

[c] Hans. D. v. 75, pp. 907, 986, 1011, 1082, 1162. Com. Jour. June 14, 17, and 20, 1844. See Martin's Prince Consort, v. 1, p. 226.

[d] Hans. D. v. 75, p. 1019.

[e] Northcote, Financial Policy, pp. 100-110.

[f] The total loss of revenue by the remissions of this Bill amounted to about half-a-million per annum, being 200,000*l.* more than had been contemplated by government when they introduced the measure. Annual Register, 1850, pp. 119-123.

stage. The other Bill did not proceed beyond a first reading, owing to the lateness of the session. Both these measures were again brought forward in the following session, but, through the exertions of the government, were finally rejected.[g] Precedents.

Next year, the budget was introduced on February 17. It met with an unfavourable reception from the public. February 21 was fixed upon for its discussion in committee, but, before that day arrived, the government sustained a defeat on Mr. Locke King's County Franchise Bill, and resigned office. Their retirement was however attributed, at least in part, to the unpopularity of their financial policy. Owing to the inability of the Conservative party to form an administration, the late ministers resumed their places. On April 4, Sir Charles Wood again brought forward his budget in nearly the same shape as before. But, on May 2, Mr. Hume succeeded in carrying an amendment, to limit the duration of the income tax to one year, instead of three years as proposed in the budget. He afterwards obtained the appointment of a select committee to enquire into the mode of assessing and collecting this impost. Twice during this session the ministry sustained defeats upon a motion of Lord Naas respecting the mode of levying the duty on home-made spirits when taken out of bond. But at a subsequent stage they retrieved their position, and succeeded in negativing the Bill introduced by Lord Naas to carry out his project.[h] Notwithstanding these defeats, the government remained in office until their final overthrow in February 1852, when they were replaced by a Conservative ministry.[i] 1851.

On December 3, 1852, the budget was introduced by the new chancellor of the exchequer, Mr. Disraeli. It met with formidable opposition at the outset, and although an attempt, on the part of Mr. Thomas Duncombe, to dispose of it as a whole, on the question that the Speaker do now leave the Chair, was unsuccessful; yet, as soon as the House went into committee, and the first resolution by which it was proposed to double the existing house tax was submitted, all the opposing parties combined against it. Rival sections found themselves able to join in defeating the ministerial scheme in the aggregate, though differing amongst themselves as to the merits of its several parts. After a protracted debate, the government were defeated on December 16, by a majority of 19, whereupon they retired from office. At this time, ministers had no assurance of support from the majority in the House of Commons, upon their policy generally; accordingly it was expedient that they should retire, although constitutional usage did not necessitate their resignation.[j] 1852.

[g] Northcote, Financial Policy, pp. 124, 165.

[h] Ann. Reg. 1851, p. 102. Hans. D. v. 116, p. 631.

[i] Northcote, pp. 142–165.

[j] *Ib.* pp. 174–181. And see *ante*, p. 222.

Precedents.

1853. On April 18, 1853, Mr. Gladstone, as chancellor of the exchequer, introduced his first budget. Though full of startling conceptions and new financial ideas, it was received on the whole with considerable favour. In one or two particulars, however, Mr. Gladstone was compelled to modify his scheme. A proposition for the revision of licenses upon certain trades, though not rejected by the House, met with so much opposition out of doors that it was ultimately abandoned. Mr. Gladstone was also unsuccessful in his endeavour to effect a readjustment of the advertisement duty. Before the budget was brought in, a resolution had been carried, in opposition to the government, in favour of the total repeal of this duty. In consequence of this defeat, the government were obliged to give way, and consent to the abandonment of this duty. The Bill for the repeal of the attorneys' certificate duty was again introduced, notwithstanding the resistance of government, but it was defeated at a subsequent stage. In other respects the financial measures of the government were passed through the House of Commons without much difficulty.[k]

1854. The budget for 1854 was introduced by Mr. Gladstone on March 6, but the growing demands of the war with Russia rendered it necessary for him to bring forward a second financial scheme on May 8. These measures gave rise to much debate, but were not subjected to any alteration.

1860. Nothing occurred in respect to any of the budgets of the succeeding years to call for remark until that of February 10, 1860, which was presented by Mr. Gladstone. It included a proposal for the repeal of the paper duty, thereby remitting taxation to the amount of more than one million pounds.[l] The Bill to give effect to this measure was strenuously opposed in its passage through the House of Commons, and was thrown out in the House of Lords.[m] This circumstance had no other remarkable result except that it led to the adoption, in 1861, of different arrangements in reference to the fiscal legislation required for the service of the year. Instead of introducing several distinct Bills upon the resolutions reported from the Committee of Ways and Means for the imposition of taxes, the several propositions were all included in one Bill. In this way the government were enabled to renew their measure for the repeal of the paper duties, and to carry it successfully through both Houses. Much dissatisfaction, however, was expressed at the magnitude and complexity of this Bill, and at the curtailment of the opportunities for discussing the various points involved therein, on account of

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[k] Northcote, pp. 183-217.

[l] Hans. D. v. 162, p. 908.

[m] For a narrative of the proceedings in both Houses in regard to this case, see *post*, p. 809.

their being all embraced in one measure. Accordingly, in committee on the Bill, it was agreed that it should be divided into three, namely, the Inland Revenue, Stamp Duties, and Spirits Sale Bills, all of which received the concurrence of the House of Lords. Precedents.

In 1862 the budget propositions were again included in one Bill, which was probably the largest 'Money Bill' that had ever been introduced into the imperial Parliament, as it dealt with between twenty-two and twenty-three million pounds of public taxation. On this occasion no attempt was made to alter the form of procedure, though it was severely commented upon in both Houses.[n] The only alteration that was made in this budget was by the introduction in the House of Commons, on May 12, of an amendment in respect to beer and spirit licenses, to which the government gave their consent. 1862.

The budget of 1863 contained two proposals which encountered serious opposition within and without the walls of Parliament. Of these one was a provision to subject charities to the operation of the income tax, from which they had been previously exempt. Mr. Gladstone defended this item of his budget with great skill, in an elaborate argument. Nevertheless, he declared at once that the government had no wish or intention to press its acceptance upon the House 'by the means which a government may exert.' 'The House must be responsible for its rejection.' After a full debate, in which no 'independent member declared himself' favourable to the scheme, Mr. Gladstone withdrew this provision without taking the sense of the committee upon it.[o] The other obnoxious recommendation in this budget was a proposal to impose a license duty upon clubs. In deference to the requests that were made to him 'from all quarters,' Mr. Gladstone consented to withdraw this item.[p] 1863.

The financial proposals of the government contained in the budget of 1864 were adopted substantially as they were submitted to the House of Commons.[q] 1864.

The budget of 1865 contained propositions affecting the stamp duties, income tax, and the duties on tea and on fire insurances. These were severally agreed to by the House of Commons. But a question arose in regard to the time when the proposed reduction of the duty on tea should take place. The government proposed that the new duty should go into operation on May 6; but a strong case was made out for delaying the time until June 1; and although opposed on general principle to the amendment, the chancellor of the exchequer finally consented to the adoption of a proviso, to be 1865.

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[n] See Hans. D. May 12 and 30, 1862; and *ante*, p. 176.

[o] Hans. D. v. 170, pp. 1102, 1125. He also withdrew a resolution to impose a Legacy Duty on Charitable Bequests in Ireland. *Ib.* p. 1773.

[p] *Ib.* pp. 846, 1365, 1395.

[q] *Ib.* v. 176, p. 1858.

Precedents.

added to the resolution, 'That, on special grounds, the said reduction shall not take effect until June 1, 1865.'[r]

1866.

The budget of 1866 was introduced by Mr. Gladstone, the chancellor of the exchequer, on May 3. In the month of July a change of ministry took place. On July 23, the new finance minister, Mr. Disraeli, informed the House, that in order to raise the necessary funds to meet certain supplementary estimates which the incoming administration had felt it their duty to submit to Parliament, they had resolved upon relinquishing the Bill, which had passed its second reading, for the conversion of certain terminable annuities towards the liquidation of a portion of the national debt. This was the only alteration effected in the financial proposals of the ex-ministry.

Rights of the Commons in the grant of supply.

In proceedings in Parliament upon matters of supply and taxation, the two Houses do not stand on precisely the same footing. Although the consent of both Houses is indispensable to give legal effect and validity thereto, yet, from a very early period, the Commons have succeeded in maintaining their exclusive right to originate all measures of this description. They have gone further, and have claimed that such measures should be simply affirmed or rejected by the Lords, and should not be amended by that House in the slightest particular. The Lords have practically acquiesced in this restriction; although they have never formally consented to it.[s]

A similar question has been frequently raised as to whether Legislative Councils in the colonies, whether elected or nominated, can claim the right to amend Money Bills. This claim has been sometimes, though rarely, admitted by the Houses of Assembly, who generally insist upon the strictest limitation of the powers of the Upper Chamber, in conformity with the prevailing practice of the imperial Parliament.

A very strong argument in defence of amendment was made by the Legislative Council of South Australia, in 1857, to a Bill to repeal tonnage duties on shipping.[t]

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[r] Hans. D. v. 178, pp. 1471 1500.

[s] *Ib.* v. 163, pp. 720, 722.

[t] Proceedings Parl. S. Australia, 1857–8, v. 1, *passim*; v. 2, Nos. 71 and 101. This case is also noted in Forster's South Australia (London, 1866), pp. 169–177.

The difficulties which arose in South Australia between the two Houses in regard to the amendment of Money Bills led to a formal agreement, adopted in November 1857, which merely conceded to the Legislative Council the right of making formal amendments to such Bills, though not to money clauses therein; but admitting suggestions to be offered by the Legislative Council even in respect to the parts of such Bills which deal with money or taxation. This arrangement has since continued in operation, and has worked well.[u]

In the session of the South Australian Parliament, which closed on November 17, 1876, 'the Legislative Council suggested that the House of Assembly should strike out from the second Loan Bill, for 887,800*l.*, the item of 123,760*l.* for improvements at Port Victor, and the Bill was returned to the Assembly; but that chamber, by a majority of fifteen, decided not to adopt the suggestion of the Council. That body decided, by a majority of one, not to withdraw the suggested amendments, and the measure therefore dropped. The government introduced another Bill, omitting the items objected to by the Council, which was passed.'[v]

A similar conflict took place between the two Houses in New Zealand in 1872, which was complicated by the terms of a colonial statute, passed in 1865, which expressly conferred upon both Houses the privileges exercised by the imperial House of Commons. It was finally agreed that the questions involved in this dispute should be referred for the opinion of the law officers of the crown in England.[w] They were of opinion that the Parliamentary Privileges Act of 1865 did not confer upon the Legislative Council any larger powers than they had antecedently possessed in regard to Money Bills, and that the particular amendment made by the Council was one which would not have been allowed by the imperial House of Commons.[x]

The questions in controversy between the two Houses in matters of supply have been elaborately discussed in the 3rd vol. of Hatsell's Precedents, and in May's Treatise on the Practice of Parliament; it would therefore

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[u] Proceedings Parl. S. Australia, 1874, v. 1, pp. 27, 33, 51; *Ib.* H. of Ass^y. Proceedings, pp. 160, 181 186.

[v] 'The Colonies,' Jan. 20, 1877, p. 2. For statement of respective constitutional rights of the two Houses in matters of supply, see report of Sel. Com^e. Leg. Ass^y. Victoria, on 30 Oct. 1877. Votes and Proc. 1877–8, v. 1, pp. 102, 251; also Cont. Rev. v. 38, p. 952, a paper by Prof. B. Price.

[w] N. Zealand Pap. 1872. A. No. 1, p. 65.

[x] *Ib.* A No. 1, B. *Ib.* Parl. Deb. Sept. 3, 1872; Com. Pap. 1860, v. 46, p. 466.

be superfluous to enter upon them here; suffice it to say that the proceedings between the two Houses on this subject are now in strict conformity with the resolution of the Commons on July 3, 1678, which declared that 'all aids and supplies, and aids to his Majesty in Parliament, are the sole gift of the Commons; and all Bills for the granting of any such aids and supplies ought to begin with the Commons, and that it is the undoubted and sole right of the Commons to direct, limit, and appoint in such Bills the ends, purposes, considerations, conditions, limitations, and qualifications of such grants; which ought not to be changed or altered by the House of Lords.'

Supplies, the sole gift of the Commons.

Practice of the Lords in supply.

Without abandoning the abstract right of dealing with Bills of supply and taxation as they may think fit, the Lords seldom attempt to make any but verbal alterations, in which the sense or intention is not affected; but even in regard to these, when the Commons have accepted them, they have made special entries in their journal recording the character and object of the amendments, and their reasons for agreeing to them.[y]

Of late years an attempt has been made, by an ingenious process of reasoning, to establish a distinction between the right of the Lords to reject a Bill imposing a tax and one repealing a tax. But this distinction is fallacious, and is not warranted either by precedent[z] or by constitutional authority.[a] The only ground for such a difference is the fact that taxes being levied on behalf of the sovereign, when she, by her responsible financial advisers, is desirous of renouncing any specific tax, and the Commons assent to the repeal of the same, it is not customary, under ordinary circumstances, for the Lords

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[y] See May's Parl. Prac. ed. 1883, p. 630, citing precedents.

[z] Report of Com^e. on Tax Bills, Com. Pap. 1860, v. 22, pp. 125–134

[a] See Cox, Inst. p. 188.

to oppose the wishes of the sovereign and of the other House. The control of the public finances by the House of Commons is a constitutional right, and they are presumed to be the best judges of the financial condition of the state, its obligations and requirements. Nevertheless, every Bill to impose or repeal a tax involves other considerations besides those which are purely questions of revenue; it necessarily includes principles of public policy, or of commercial regulation, and on points of this kind the Lords, as a co-ordinate branch of the legislature, are constitutionally free to act and advise as they may judge best for the public interests. It is true that the peculiar privileges of the Commons in regard to supply and taxation should ordinarily restrain the Lords from intermeddling with the details of financial schemes propounded by the government and agreed to by the popular branch, but circumstances may occur when the exercise by the House of Lords of their right to accept or reject any measure affecting the finances of the nation may be most beneficial to the interests of the community at large; and it would be unwarrantable to deny them the possession of this right because it might be expedient that it should be resorted to upon extraordinary occasions.

Paper duties case.

The relations between the two Houses in matters of supply and taxation will be further illustrated by a narrative of the paper duties case. We have already seen[b] that in the year 1858 the House of Commons, by the adoption of an abstract resolution, condemned the continuance of the paper duty as a permanent source of revenue. Accordingly, in 1860, a measure for the repeal of this impost was submitted by the chancellor of the exchequer in his budget, and in due course was sent up to the House of Lords in a separate Bill. The paper duty yielded a revenue of 1,300,000*l.* per annum, to make up for the loss of which it was proposed to add a penny in the pound to the income tax. This recommendation was agreed to by both Houses; but the Lords refused to concur in the remission of the paper duties, on the ground that the state of the public finances, and the condition of the country, then on the eve of war with China,

[b] See *ante*, p. 716.

Paper duties case.

did not warrant the sacrifice of such a large amount of revenue. Other injurious consequences were also predicted as likely to result from a repeal of the duty on this article of manufacture. Whereupon the second reading of the Bill was postponed for six months. After the House of Commons became officially cognisant of this fact, by the report of a committee appointed to ascertain the fate of the Bill, they appointed a committee to search the journals of both Houses, in order to ascertain the practice of Parliament with regard to the several descriptions of Bills imposing or repealing taxes. On June 29, this committee reported numerous precedents, which were set forth with great care and perspicuity; but they refrained from offering any opinion, or from making any comments upon the practice of each House, except to illustrate and explain. On July 5, Lord Palmerston[c] (the premier) proposed to the House of Commons the following resolutions:—

'1. That the right of granting aids and supplies to the crown is in the Commons alone, as an essential part of their constitution; and the limitation of all such grants, as to the matter, manner, measure, and time, is only in them. 2. That although the Lords have exercised the power of rejecting Bills of several descriptions relating to taxation by negativing the whole, yet the exercise of that power by them has not been frequent, and is justly regarded by this House with peculiar jealousy, as affecting the right of the Commons to grant the supplies and to provide the ways and means for the service of the year. 3. That to guard for the future against an undue exercise of that power by the Lords, and to secure to the Commons their rightful control over taxation and supply, this House has in its own hands the power so to impose and remit taxes, and to frame Bills of Supply, that the right of the Commons as to matter, manner, measure, and time may be maintained inviolate.'

It was not proposed to follow up these abstract propositions with any action in reference to the Bill for the repeal of the paper duties, because the legal and technical right of the Lords to refuse their assent to that Bill was not disputed by the government, who nevertheless thought it necessary that the protest implied in the adoption of these resolutions should be recorded. They were accordingly agreed to by the House, on July 6, without a division, but after a full debate. In the course of the discussion the following points were strongly insisted upon. The first resolution, it was remarked, seems to have been copied from an ancient precedent on the Com-

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[c] It since appears that Lord Palmerston himself—though protesting officially against the proceedings—was of opinion that the Lords had 'done a useful thing' in throwing out this Bill. Martin, Pr. Consort, v. 5, pp. 100, 132, 134.

mons Journals for 1692, the language whereof, though correct in the main, has been noticed by Hallam, in his Constitutional History, as that which cannot be precisely vindicated or approved, for it appears (however unintentionally) to deny the right of the Lords to a free concurrence in matters of supply; which is contrary to the express admissions of the second resolution.[d] It is well known that the Lords have never formally acknowledged any further privilege to the Commons than that of originating Bills of Supply; and although in practice they have for a long period acquiesced in the claim of the Commons that they should not alter or amend any Money Bill, yet their right to reject such measures as a whole is as undoubted as their right to express agreement therein. It is granted that the power of taxation is one that peculiarly appertains to the House of Commons; and that it is their privilege, in providing supplies for the service of the year, should they think fit, 'to combine the whole into one scheme,' that must be accepted or rejected by the Lords, without any attempt to alter or vary the details of the financial arrangements composing the same.[e] Yet the propriety and expediency of such a course, in every instance, may be seriously impeached. We have already seen,[f] in the case of Palmer, when the Commons proposed to grant a sum of money to a person whose claims to compensation were open to dispute, that they included the appropriation in a separate Bill, for the avowed purpose of affording to the Lords an opportunity of considering that grant distinctly from the other grants of the year. In like manner, in the immeasurably more important instance of the financial propositions of the government, it properly belongs to the Lords to judge, not merely of the general expediency of the proposed scheme, when regarded as a whole, and of its probable results upon the country at large, but also to consider the various questions of commercial legislation and public policy that may be involved in its details. The House of Lords has an onerous duty to perform in respect to every Bill, financial or otherwise, that may be sent to it from the other chamber, in submitting the same to careful revision, for the purpose of restraining hasty or improvident legislation, and sanctioning by its wisdom, influence, and authority whatever may be necessary to promote the public good. This can only be adequately performed when full opportunity is afforded for pronouncing an independent judgment upon every separate question which the Lords may be called upon to decide.[g]

Paper duties case.

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[d] Hans. D. v. 159, pp. 1419, 1487.

[e] *Ib.* pp. 1389, 1565.

[f] See *ante*, p. 703.

[g] In support of this view, see Jurist. N.S. v. 6, pt. 2, pp. 235, 299. See also Ed. Rev. v. 115, p. 211, &c. For a reference to ancient precedents, and an able and ingenious argument in opposition to the claims and proceedings of the Lords on this occa-

Paper duties case.

On July 17, Lord Fermoy moved the House of Commons to resolve 'that the rejection by the Lords of the Bill for the repeal of the paper duties is an encroachment on the rights and privileges of the House of Commons; and it is therefore incumbent upon this House to adopt a practical measure for the vindication of its rights and privileges.' He based this proposition on the erroneous construction of the first resolution moved by Lord Palmerston, and which Hallam by anticipation had condemned, and also on the alleged necessity for following up the foregoing resolutions with some decisive action. But the ministry opposed this motion, and the previous question was proposed thereon and negatived.[h]

In the following session (1861), the chancellor of the exchequer, conformably to the principle asserted in the third resolution aforesaid, embodied his whole budget propositions, including resolutions for the repeal of the paper duty, in one Bill. Great exception was taken to this course by a powerful minority in the House of Commons, and it underwent considerable discussion on May 13 and 16. It was urged that, although such a proceeding was undeniably in accordance with some former precedents, and a strictly allowable method of disposing of the financial measures of the year, yet that the practice for the last thirty or forty years had been to insert the propositions of the budget in several Bills; that it was not desirable to include multifarious matters, such as the repeal and the imposition of taxes in one Bill, even though the subjects were cognate; that the Lords have never formally abandoned their right to amend Money Bills, though leading members of that House may have done so, when speaking in its behalf; that admitting such a claim to be inconsistent with the privileges of the Commons in regard to supply, yet that the balance of the constitution requires that the Lords should possess a controlling power in all matters of legislation, whether financial or otherwise, and that they ought not to be driven to the alternative of rejecting the whole supplies for the year- and thereby jeopardising the public credit, the existence of the ministry,

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sion, see various articles in Smith's Parl. Remembrancer, 1860, pp. 123-162, 172, 179, 194. And see the speech of Lord R. Montagu, in the H. of C. March 20, 1860, in reference to conduct of the H. of Ass^y. of the colony of Victoria, in claiming the right to tack a Tariff Bill to the Appropriation Bill, with a view to compel the Leg. Council to accept the same, contrary to the instructions laid down by the sec. of state for the colonies, that Revenue and Appropriation Bills should invariably be distinct and separate measures. See also the 'Correspondence,' and 'Further Correspondence,' 'respecting the non-enactment of the Appropriation Act in Victoria,' presented to Parliament in 1860. And see 'Correspondence,' and 'Further Correspondence,' on a similar question of difference between the two Houses of the Legislature in Victoria, presented to Parliament in 1878.

[h] Hans. D. v. 159, pp. 2078-2106.

Paper duties case.

and the welfare of the state—or of being obliged to agree to a Bill containing many distinct and separate provisions, all of which they were not disposed to accept; that while the extreme right of the Commons may be held to justify the embodying of all the budget resolutions in one Bill, yet that this power should not be exercised except on extraordinary occasions, and that ordinarily no proceedings should be resorted to that would deprive the Lords of the opportunity of exercising a deliberate judgment on every distinct legislative proposition, until after continued provocation, and the repeated exercise, by the Lords, of their right to reject measures forming part of the financial scheme agreed to by the Commons; which extreme right of the Lords ought to be reserved for rare and exceptional occasions; and, finally, that it was quite unprecedented for a financial Bill which had been rejected by the Lords to be afterwards embodied in another Bill, sent up and passed by them in that shape; so that, at all events, the course now proposed was premature, and ought not to have been adopted until after successive failures to induce the Lords to agree to the repeal of the paper duty in a separate Bill. Nevertheless, the Bill was sent to the Lords in the shape it had been introduced by the government. Its second reading was moved in that House on June 7. In the course of the debate thereon, Lord Derby, while asserting that the Bill was open to objection in point of form, did not attempt to dispute the strict right of the Commons to include all the financial arrangements of the year in one measure, alleging that the Lords could, if they deemed it expedient, vindicate their privileges by dividing the Bill into two or more parts. He also clearly showed that the Lords had never formally abandoned their right to amend a Money Bill, and that in the opinion of eminent constitutional authorities, they would be warranted in such an act, should it be necessary to vindicate their freedom of deliberation, and to prevent the enacting of a measure which they regarded as objectionable.[1] He added that there were 'repeated cases of financial measures being amended by the House of Lords, and the amendments being accepted by the House of Commons' (after, of course, the formal assertion of their privileges, by laying aside the Bill, and re-introducing it, as amended). Notwithstanding these objections, no attempt was made to oppose the passing of this Bill, or to introduce any amendments therein; its opponents contenting themselves with recording, in an able and elaborate protest, all the arguments that had been adduced against it.[2] Toulmin Smith, in his Parliamentary Remembrancer for 1861, although he had sided against the Lords in the beginning of the

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[1] Hans. D. v. 163, p. 720.
[2] *Ib.* p. 1166. Lords' Jour. v. 93, p. 378.

controversy, condemned the present proceeding of the Commons, as betokening a lack of 'ordinary courtesy and self-respect,' 'really amounting to a declaration that the House of Lords shall be overridden, without scruple, whenever the Commons want to pass a Bill that cannot be safely trusted on the stage of fair discussion.'[k]

Commons include the whole budget resolutions in one Bill.

Following the precedent so successfully established the chancellor of the exchequer determined to introduce the budget propositions of 1862 in one general Bill.[l] Leading members of the Commons strenuously protested against this course, as being a serious restriction upon the opportunities for discussing these important financial measures, but without avail.[m] This was probably the largest 'Money Bill' ever passed, as it dealt with between twenty-two and twenty-three million pounds of public taxation. It was commented upon somewhat severely in the House of Lords on this ground, but the colonial secretary (the Duke of Newcastle) contended that the new practice of combining the whole budget resolutions in one Bill was merely a resort to former constitutional usage, and was sanctioned by high authority. Lord Derby considered that this course was more open to objection on the part of the Commons than of the Lords, inasmuch as it 'deprives the House of Commons of some of the most valuable means which they have at their disposal of duly debating and fully considering the financial measures of the government.' So far as the Lords were concerned, 'the one course interposes to us no greater obstacle than the other; because, as it is perfectly within our province and our right to reject a particular proposition in a single Bill, so it is equally within our competence to reject that same proposition when incorporated with others,'[n] and leave to the Commons the consequences of their own proceeding. After some further debate, the Bill was concurred in

[k] Parl. Rememb. 1861, p. 88; and see pp. 100, 101, 118; also Martin, Pr. Consort, v. 5, p. 341.

[l] Hans. D. v. 166, p. 772.

[m] *Ib.* pp. 1561–1567.

[n] *Ib.* v. 167, p. 180.

without amendment. In like manner, the financial propositions of government in each year from 1862 to the present time have all been included in one Bill.[o] And in 1869 ministers persisted in the same course of procedure, notwithstanding urgent representations by Opposition members that it would greatly facilitate the course of public business in the House of Commons if the financial resolutions of that year were embodied in two separate Bills.[p]

Money Bills.

We will now proceed to consider the subject of Money Bills, which are of three kinds, viz. Tax Bills, Bills of Supply, and Bills of Appropriation. All these Bills have a peculiar form of preamble, which intimates that the revenue or grant of money is the peculiar gift of the House of Commons, and such Bills are invariably presented for the royal assent by the Speaker of the House of Commons.[q]

Tax Bills, for raising revenues to be applied towards the services of the current year, are founded upon resolutions of the Committee of Ways and Means.

In like manner, Bills of Supply, or rather of Ways and Means, authorising an advance out of the Consolidated Fund, or the issue of exchequer bills, towards making good supplies which have been voted by the House of Commons for the service of the year, emanate from the Committee of Ways and Means, in the way which has been already described.[r]

Appropriation Bill.

When the Committees of Supply and Ways and Means have finished their sittings, a Bill is introduced,[s] which enumerates every grant that has been made during the session, appropriates the several sums, as voted by the Committee of Supply, which shall be

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[o] Hans. D. v. 170, p. 851; v. 183, p. 1128; May, Parl. Prac. ed. 1883, p. 650. On May 17, 1866, Mr. Disraeli took occasion to reiterate his conviction that this course was attended with considerable inconveniences.

[p] Hans. D. v. 195, p. 600.

[q] Cox, Inst. 198.

[r] See *ante*, p. 786

[s] Hans. D. v. 189, p. 1340.

issued and applied to each separate service, and directs that the said supplies shall not be used for any other than the purposes mentioned in the said Act. This is known as the Consolidated Fund Bill, or, more generally, as the Appropriation Bill. By this Act, which completes the financial proceedings of the session, the supply votes, originally passed by the Commons only, receive full legislative sanction. The appropriation is always reserved for the end of the session, and it is irregular to introduce any clause of appropriation into a revenue or other Bill passing through Parliament at an earlier period; for the questions of ways and means and of appropriation should be kept perfectly distinct.[t]

Duty of the Speaker in matters of supply.

By constitutional practice, the Speaker of the House of Commons, as the guardian of its privileges, is required to take oversight of the financial proceedings of the House during the session, and it is his duty to ascertain that every Bill for giving ways and means to the Treasury is kept within the amount of the votes in supply already granted. At the close of the session he checks the final balance between the full amount of the votes in supply and the ways and means previously authorised, and limits the final grant of ways and means in the Appropriation Act to that amount.[u]

Appropriation clauses in Bills of Supply.

The constitutional rule, now so well understood and acknowledged, 'That the sums granted and appropriated by the Commons for any special service should be applied by the executive power only to defray the expense of that service,'[v] although not wholly unrecognised in earlier times,[w] was first distinctly enunciated and partially enforced soon after the Restoration. But it was not until the Revolution of 1688 that this great prin-

[t] The Speaker, in Mir. of Parl. 1841, p. 931; and see Hans. D. v. 170, pp. 1897, 1914; and Earl Grey's Colonial Policy, v. 1, p. 421. But this was not formerly the case: see Parl. D. v. 9, p. 632.

[u] Report on Pub. Moneys, Com. Pap. 1857, Sess. 2, v. 9. Mem. on Financial Control, pp. 5, 27, 76.

[v] 3 Hatsell, 210.

[w] See Hargrave's Judicial Arguments, v. 1, pp. 397-402.

ciple was finally established and incorporated into the system of parliamentary government.[x] At this epoch Solicitor-General (afterwards Lord) Somers and Mr. Sacheverel, by special direction of the House of Commons, framed some appropriation clauses with great care, which were included in the statute 1 Wm. & Mary, s. 2, c. 1, and are given in full in Hatsell, vol. iii. Appendix, No. 15. These clauses were not formally repeated in subsequent Bills of Supply, but they are referred to as to be 'put in force and practised' in various succeeding statutes. Thenceforth it became the established and uniform practice, 'that the sums granted by the House of Commons for the current service of the year should, by a special appropriation, either in the act for levying the aid or in some other act of the same session, be applied only to the services which they had voted.' This doctrine has been enforced, from time to time, by penalties imposed by Acts of Parliament upon officers of the Exchequer and others who should divert or misapply the moneys granted to any other purpose; and a violation of the same is a misdemeanour, that has been declared to be a sufficient ground for a parliamentary impeachment.[y]

Form of the appropriation clause.

The modern form of the appropriation clause, after enumerating the grants of the session, and applying them to their respective services, is as follows: 'That the said aids and supplies shall not be issued or applied to any use, intent, or purpose, other than those before mentioned, or for the other payments, &c. directed to be satisfied by any Acts of Parliament, &c., of this session.' A clause of this description was invariably inserted in the annual Appropriation Acts up to the year 1869. On two occasions, in 1857 and in 1859, where two sessions were held in one year, it was

[x] 3 Hats. 202.

[y] *Ib.* 206. Cases cited in Lord Monteagle's Report, Com. Pap. 1857, Sess. 2, v. 9, p. 567; and see Hans D. v. 164. p. 1740.

omitted in the acts of the second session on technical grounds, arising from the fact of two parliaments being convened in each of those years. But, in point of fact, it has been authoritatively stated, that though, as a declaration of constitutional principle, the said clause might reasonably be inserted in any Appropriation Bill, yet that 'it was in point of law mere surplusage, because the government had no authority to appropriate those moneys to any other purposes than those for which Parliament had appropriated them.'[z] Accordingly, since 1870, the clause has been omitted; and the Act itself materially simplified and abbreviated.

Authority given to use surpluses of army and navy grants to make good deficiencies therein.

The Appropriation Act also contains a provision, that the expenditure for navy and army services shall be confined to those services respectively, but that 'if a necessity shall arise for incurring expenditure not provided for in the sums appropriated' for the said services, 'and which it may be detrimental to the public service to postpone until provision can be made for it by Parliament in the usual course,' application shall be made to the Treasury, who are empowered to authorise such additional expenditure to be temporarily defrayed out of any surpluses which may have accrued by the saving of expenditure upon any votes within the same departments; 'provided that the House of Commons shall be duly informed thereof, in order to make provision for such deficient expenditure as may be determined; and provided also, that the aggregate grants for the navy and army services shall not be exceeded.'[a]

Subject to approval of the House of Commons.

The manner in which the observance of the Appropriation Act is secured, and the circumstances under which any deviation from the strict rule of parliament-

[z] Mr. Gladstone, in Hans. D. v. 164, p. 1745. But the Treasury may refrain from expending money granted for a particular purpose, if not satisfied with the propriety of the expenditure. *Ib.* v. 204, p. 1669.

[a] 37 & 38 Vict. c. 56, § 4; see further, *post*, vol. 2. Hans. D. v. 143, p. 563.

ary appropriation is permissible, will engage our attention in the next volume.

It only remains, in this branch of our enquiry, to add a few remarks upon the progress of the Appropriation Bill through Parliament.

Procedure upon the Appropriation Bill, at its various stages.

The constitutional restrictions upon the grant of money otherwise than through the Committee of Supply, necessarily confine the action of the House of Commons in respect to money votes to the proceedings of this committee, and to the decision upon their resolutions, when reported to the House. A motion to address the crown, that a vote which had been reported from Committee of Supply, and agreed to by the House, should not be expended, was declared by the Speaker to be irregular and out of order.[b] Technically, such vote could, of course, be struck out of the Appropriation Bill.[c] But in practice this Bill has been defined by Lord Palmerston to be 'simply a form that is required by the constitution, and not a Bill to give rise to any discussion.' And while he did not 'dispute the power or right of the House to make any alteration it pleased in a Bill as it passed through its several stages, it had never been a custom, by alterations in the Appropriation Bill, to rescind the previous acts and votes of this House.'[d] Amendments which did not affect the determinations of the Committee of Supply have, though very rarely, been made in the Appropriation Bill during its progress through the House.[e]

No obstruction should be offered to the passage of the Appropriation Bill through the House, except under extraordinary circumstances.[f] Debates and amendments upon the several stages thereof are governed by the rules applicable to other Bills, and must therefore be relevant to the Bill, or some part of it, and should

[b] Hans. D. v. 161, p. 1500.
[c] *Ib* p. 1502.
[d] *Ib.* pp. 1750, 1751; and see v. 176, p. 1866.
[e] See Com. Jour. July 22, 1858.
[f] Hans D. v. 217, pp. 1257, 1358.

not be allowed the latitude practised on going into Committees of Supply and of Ways and Means.[g] But this rule does not preclude a member from making observations upon the general conduct of public business or from bringing a question of foreign or domestic policy before the House, upon the motion for going into committee on this Bill, or upon the second or third reading, if it be a question that 'arises out' of any of the votes thereby appropriated.[h]

Final statement of estimated revenue and expenditure for ensuing year.

In 1863 the chancellor of the exchequer (Mr. Gladstone) introduced the practice of submitting to the House, upon the third reading of the Appropriation Bill, a rectified statement of the estimated revenue and expenditure for the ensuing year. He pointed out the alterations which had been made in the original estimates since they had been introduced, in consequence of certain items of revenue which had been asked for by government not having been granted by the House; and noticed the effect of certain items of expenditure which had been authorised pursuant to supplemental estimates upon the general balance, as stated on the opening of the budget.[i]

In 1864 Mr. Gladstone made a similar statement, upon the motion for going into committee on the Appropriation Bill;[j] but not in 1865. On July 23, 1866, Mr. Disraeli informed the House of the altered position of the public finances since the budget of his predecessor in office had been submitted. But these have been exceptional cases; as a rule it is now admitted that the government should make their budget statement as explicit and accurate as possible, and not so as to need subsequent rectification.[k]

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[g] Hans. D. v. 143, pp. 560, 641; *Ib.* v. 180, p. 836.

[h] *Ib.* v. 143, p. 643; v. 176, p. 1859. *Ib.* v. 189, p. 1526; v. 213, pp. 644, 709; v. 226, pp. 652 683, 778; v. 231, pp. 821, 1119, 1158.

[i] *Ib.* v. 172, p. 1268.

[j] *Ib.* v. 176, p. 1857.

[k] Sir S. Northcote and Mr. Gladstone in Hans. D. v. 226, pp. 513, 522.

On account of the formal character of the Appropriation Bill, it had been customary to abstain from printing it for the use of members. But as complaints were made of alterations in the wording of the Bill having been occasionally made which were unknown to members generally, it was resolved, on March 24, 1863, that henceforth a sufficient number of copies of all Appropriation Bills should be printed, and delivered to members applying for the same, in time for consideration before the committal of such Bills.[l] In 1865, the Appropriation Bill was presented to the House in a much improved shape.[m] In 1869, the attention of the House was directed by a private member to an alteration in the Appropriation Bill, empowering the Treasury to 'borrow on the credit of the same,' from any quarter they might think fit, instead of, as in all previous Appropriation Bills, from 'the Bank of England' only[n] While the concurrence of the Lords is necessary to every Bill of Supply, it has been customary of late years for such measures to be agreed to by the House of Lords without amendment or even debate.[o]

Appropriation Bill to be printed.

When the Appropriation Bill has passed both Houses, and is ready for the royal assent, it is returned into the charge of the Commons until the time appointed for the prorogation of Parliament, when it is carried by the Speaker to the bar of the House of Peers, and there received by the clerk of the Parliament, for the royal assent. When the sovereign is present in person, the Speaker prefaces the delivery of the Money Bills with a short speech. 'The main criterion by which the topics of these speeches have been selected appears to have been the political importance of the measures which have employed the attention of the House of Commons during the preceding session,

To be presented by the Speaker for the royal assent.

Speech of the Speaker on presenting Money Bills.

[l] Hans. D. v. 169, pp. 730, 1863.
[m] *Ib.* v. 180, p. 717.
[n] *Ib.* v. 198, pp. 1146, 1282.
[o] See *ante*, p. 806.

Presentation of money bills.

unlimited by any consideration of their progress or their failure.' Even 'the peculiar privilege and concern of the House of Commons' has been noticed in such addresses.[p]

Referring to the defence made by Mr. Speaker Abbott, in 1813, of one of such speeches, Sir Erskine May characterised it as 'an act of indiscretion, if not disorder, which placed him in the awkward position of defending himself, in the chair, from a proposed vote of censure. From this embarrassment he was delivered by the kindness of his friends, and the good feeling of the House, rather than by the completeness of his own defence.'[q]

On one occasion some observations of Sir Fletcher Norton, in his speech on presenting the Supply Bill, became the subject of remark and complaint in the House of Commons, on account of their uncourtly style; but his friend Mr. Fox, having come to the rescue, Sir Fletcher was formally thanked by the House for his speech.[r] At the close of the Speaker's address, the Money Bills are tendered for the royal assent, which they receive before any of the other Bills awaiting the royal sanction, and in a peculiar form of words, which acknowledge the supply to be the free gift of the Commons.[s]

On the first day of the Session of 1873, the Speaker of the Assembly of South Australia presented to the House a formal protest against the action of the ministry, on the closing day of the previous session, in interfering to prevent him from presenting to the governor the customary Money Bills for the royal assent.[t]

Any deviation from the constitutional rule of parliamentary appropriation of supplies granted for the public service is to be regarded with great jealousy.

[p] Parl. D. v. 27, pp. 470, 481. And see Colchester Diary, v. 2, *in loco*.

[q] May, Const. Hist. v. 2, p. 376, *n.*

[r] *Ib.* v. 1, p. 200.

[s] May, Parl. Prac. ed. 1883, p. 690.

[t] South Australia Parl. Proc. 1873. App. No. 45, p. 6. Resolution of the House thereupon, p. 20. For statement in regard to Bills which by custom ought to be presented for royal assent by the Speaker, *vide Ib.* 1872, No. 176.

Note the proceedings had, in both Houses, when at a period of public emergency, in 1734, the Commons were induced to empower the crown to apply out of the aids of the year such sums as the exigency of public affairs might require. The Act 7 Geo. II. c. 12, § 12, containing this provision, was protested against by the House of Lords, and is censured by Hatsell as a measure entirely subversive of the rules of Parliament in the grant of supplies.[u]

Nevertheless it will sometimes occur—as when a ministerial crisis has necessitated a speedy dissolution of Parliament, or when military operations on a large scale are about to be undertaken for the defence of the empire, or the prosecution of a foreign war—that it is deemed expedient to entrust the government with means for carrying on the public service, for a limited period, by votes of credit for large sums, instead of by specific appropriations for the several branches of public expenditure, as in the case of the ordinary supplies. But this proceeding is only justifiable upon occasions of great and unforeseen emergency, which do not admit of delay; or which may render it inexpedient for the House to commit itself to the details of expenditure included in the estimates prepared by an existing ministry whose tenure of office has been condemned. It is incumbent upon the House, under such circumstances, to limit the supply of credit to the bare necessity of the state, for the period which must elapse before the reassembling of Parliament; and to require the sums so granted to be properly accounted for at the earliest possible period.[v]

Votes of credit.

But whether the supplies are voted in large sums or in detail, it is equally necessary that they should be included in an Act of Appropriation, whereby the sanction of the three branches of the legislature is given to the expenditure of the money voted by the House of Commons.

Whether supply is voted *en bloc* or in detail, an Appropriation Act is equally necessary.

In 1784 a case occurred which it was feared would have led to

[u] 3 Hats. pp. 190, 213.

[v] See *ante*, p. 758.

serious consequences. The prime minister, Mr. Pitt, was in a minority in the House of Commons, and it was well known that he was only waiting for the supplies in order to dissolve Parliament. The estimates had passed through the Committee of Supply, when, on January 12, the House of Commons resolved that any public officer who, in reliance upon the votes in supply, should cause to be paid any sums of money for the public service, after the prorogation of Parliament, and without the express authority of an Act of Appropriation, would be guilty of 'a high crime and misdemeanor, a daring breach of a public trust, derogatory to the fundamental privileges of Parliament, and subversive of the constitution.' Nevertheless, the prorogation and dissolution of Parliament took place before the passing of the Appropriation Act. The new House of Commons was favourable to Mr. Pitt's administration, and it appearing, by returns furnished to the House, that ministers had abstained from using any moneys not actually granted by law, but such as the exigencies of the state imperatively required, no further proceedings were had upon the matter.[w] The supplies in question were however re-voted in the next session, and included in the Appropriation Act 24 Geo. III. Sess. 2, c. 44.

No Appropriation Act in 1781.

There have been only one or two other instances since the Revolution of the prorogation of Parliament before an Act of Appropriation had been passed. One took place in 1807, when a new Parliament which had been in existence only about four months was dissolved, in the midst of the session, for the purpose of strengthening the government by an appeal to the country on the question of the Roman Catholic claims. On this occasion the ordinary supplies had been voted by the House of Commons, but 'the Irish Money Bills had not been passed,' and 'none of the sums which had been voted for the public service were appropriated, for no Appropriation Act had been passed.' The dissolution of Parliament under these circumstances was severely commented upon by constitutional authorities in the new Parliament.[x] The chancellor of the exchequer, in defending the course pursued by ministers, declared that during this interval there had been no irregular issue of public money, for that 'the public expenditure had been maintained out of the sums appropriated by Parliament;' clauses of appropriation having been inserted in certain Bills passed in the previous session, although there had been no general Appropriation Act. 'In the issues that had taken place, therefore, the government had acted according to law, and under the authority of Parliament.'[y] On the death of

Or in 1807.

[w] 3 Hatsell, 206-209. See the comments and explanations of Mr. Perceval, chancellor of the exchequer in 1807, on this case. Parl. D. v. 9, p. 631.

[x] *Ib.* p. 618.

[y] *Ib.* p. 631.

George III. in 1820, the Commons, in anticipation of a dissolution of Parliament, voted certain temporary supplies, which were not appropriated by Act of Parliament in that session. Objections were raised to these votes in the House of Lords, as being an infringement of the right of their lordships to assent to the grant of supplies; but it was ultimately resolved 'that this House, from the state of public business, acquiesce in these resolutions, although no Act may be passed to give them effect.'[z] Again, in 1831, owing to the excitement occasioned by the rejection of the Reform Bill in the House of Lords, Parliament was hurriedly dissolved in April, before the passing of an Appropriation Act. The new Parliament met on June 14, when all the grants of the former session were re-voted in Committee of Supply.[a]

Or in 1820.

Or in 1831.

[z] Hans. D. v. 41, pp. 1631-1635. [a] May's Prac. ed. 1883, p. 640, *n.*

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